

No. 10992

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United States

Circuit Court of Appeals

For the Ninth Circuit.

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CONTRACTORS, PACIFIC NAVAL AIR  
BASES, an Association, and LIBERTY  
MUTUAL INSURANCE COMPANY, a Cor-  
poration,

Appellants,

VS.

WM. A. MARSHALL, Deputy Commissioner of  
the United States Employees Compensation  
Commission for the 14th Compensation Dis-  
trict, and TEX HADDON,

Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Western District of Washington,  
Northern Division

MAY 1 - 1945

PAUL P. O'BRIEN,  
CLERK



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## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Affidavit of L. M. Koenigsberg .....	118
Answer of Intervenor Tex M. Haddon.....	120
Appeal:	
Bond on .....	126
Certificate of Clerk to Transcript of Record on .....	136
Designation of Parts of Record to be Contained in Record on (Appellants' Supplemental) .....	135
Notice of .....	125
Statement of Points on Which Appellants Intend to Rely on, etc. (CCA).....	139
Statement of Points on Which Appellants Intend to Rely on (DC) .....	132
Stipulation Designating Parts of Record to be Contained in Record on .....	129
Stipulation for Order Extending Time for Filing the Record on, etc. ....	133
Order Thereon .....	134
Bond on Appeal .....	126
Certificate of Clerk to Transcript of Record..	136

Index	Page
Certification of Record by Wm. A. Marshall, Compensation Commission .....	12, 83
Compensation Order Award of Compensation	79
Set out as Exhibit A at page .....	8
Complaint .....	2
Exhibit A—Case No. DD.-P-1-8269 Filed with U. S. Compensation Commission, Fourteenth District .....	8
Designation of Parts of Record to be Con- tained in the Record on Appeal (Appellants' Supplemental) .....	135
Interrogatories and Answers to Arthur E. Lukehardt .....	98
Interrogatories and Answers to Cedric L. Brash .....	102
Exhibit A—Form to be Filled in by Re- turning Men .....	106
Exhibit B—Form to be Filled in by Re- turning Men .....	107
Interrogatories and Answers to David Hart..	91
Cross Interrogatories .....	94
Interrogatories and Answers to Forrest E. Williams .....	109
Interrogatories and Answers to S. L. Platt...	100
Motion to Dismiss .....	116
Motion to Intervene .....	117
Affidavit in Support of.....	118

Index	Page
Names and Addresses of Attorneys of Record	1
Notice of Appeal .....	125
Order Granting Motion to Dismiss.....	123
Order on Stipulation Extending Time for Filing the Record on Appeal, etc.....	134
Report, Special Orthopedic Examination, H. J. Wyckoff .....	112
Statement of Points on Which Appellants In- tend to Rely on Appeal, etc. (CCA).....	139
Statement of Points on Which Appellants' In- tend to Rely on Appeal (DC).....	132
Stipulation Designating Parts of Record to be Contained in Record on Appeal .....	129
Stipulation for Order Extending Time for Fil- ing the Record on Appeal, etc. ....	133
Stipulation That Transcript of Proceedings be Deemed a Part of the Record .....	119
Transcript of Hearing (Case No. DB-P-1-8269, before Fourteenth Compensation Commis- sion, Dec. 29, 1943) .....	13
Witness for Claimant:	
Haddon, Tex M.	
—direct .....	15
Transcript of Hearing (Case No. DB-P-1-8269, before Fourteenth Compensation Commis- sion, Feb. 8, 1944) .....	21

	Index	Page
Exhibits for Claimant:		
1—Letter, Nichols Adjustment Bureau, Morrison Knudson . . . . .		84
2—Letter, Dr. E. L. White, Nichols Adjustment Bureau, Apr. 7, 1943. . .		85
3—Letter, Tex Haddon, Nichols Adjustment Bureau, May 29, 1943. . .		86
4—Letter, Tex Haddon, Nichols Adjustment Bureau, June 3, 1943. . .		88
5—Letter, Tex Haddon, Nichols Adjustment Bureau, July 12, 1943. . .		89
6—Letter, Tex Haddon, Nichols Adjustment Bureau, Sept. 3, 1943. . . .		90
Exhibits for Employer:		
A—Letter, Liberty Mutual Ins. Co., Dr. O. W. Jones, Jr. . . . .		72
B—Letter, Liberty Mutual Ins. Co., F. G. Linde, M.D., re Tex Haddon		76
Witnesses for Claimant:		
Haddon, Tex M.		
—direct . . . . .		21
—cross . . . . .		40
—redirect . . . . .		55
McFadyen, W. A.		
—direct . . . . .		57
—cross . . . . .		64
—redirect . . . . .		69
--recross . . . . .		70



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HERBERT O'HARE

Assistant United States Attorney  
1017 United States Court House  
Seattle, Washington. [1\*]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division

No. 962

LIBERTY MUTUAL INSURANCE COMPANY,  
a Corporation, and CONTRACTORS, PA-  
CIFIC NAVAL AIR BASES, an Association,  
Libellants,

v.

WM. A. MARSHALL, Deputy Commissioner of  
United States Employees' Compensation Com-  
mission for the Fourteenth Compensation Dis-  
trict,

Respondent.

## BILL OF COMPLAINT FOR MANDATORY INJUNCTION

Come Now the libellants above named and for  
bill of complaint against the respondent alleges:

### I.

That the libellant, Liberty Mutual Insurance Company, is now and was at all times herein mentioned, a mutual insurance corporation organized and existing by virtue of the laws of the state of Massachusetts, and authorized by the United States Employees' Compensation Commission to provide compensation insurance protecting the employees under the Longshoremen's and Harbor Workers' Compensation Act as extended by the Act of August 16, 1941, as amended, (42 U.S.C.A. Sec. 1651) hereinafter referred to as "The Act," and the Insurance

Carrier provided by libellant, Contractors, Pacific Naval Air Bases, an association, in accordance with the provisions of the act.

II.

That the libellant, Contractors, Pacific Naval Air Bases, is now and was at all times mentioned herein, an association of contracting firms engaged in building and erecting military and naval installations for the United States, particularly in the islands of the Pacific Ocean. [2]

III.

That the respondent, Wm. A. Marshall, is now and was at all times mentioned herein, Deputy Commissioner of the Fourteenth Compensation District under the provisions of the Act, and his office is located at Seattle within the judicial district of the above entitled court.

IV.

That on or about January 22, 1942, the libellant, Contractors, Pacific Naval Air Bases, employed one Tex M. Haddon as a civilian employee to work at a base on the Hawaiian Islands occupied or used by the United States for military or naval purposes and that said Tex M. Haddon, continued in such employment, and as such employee of said libellant until on or about December 24, 1942.

V.

That on or about September 3, 1943, the said Tex M. Haddon filed claim for compensation for dis-

ability with the said United States Employees' Compensation Commission under said Act, alleging that he was injured as the result of an accident while working for said employer during the latter part of May or the early part of June, 1942.

## VI.

The cause was within the jurisdiction of the Deputy Commissioner for the Pacific District with headquarters at Honolulu, Territory of Hawaii, but with the approval of the United States Employees' Compensation Commission and as permitted by law, was subsequently transferred to the Fourteenth Compensation District, Wm. A. Marshall, Deputy Commissioner.

## VII.

That the libellants herein gave due notice that said claim was controverted, and thereafter, at the first hearing of such claim, which was held before respondent on December 29, 1943, libellants interposed the following defenses: [3]

(1) That the said Tex M. Haddon failed to give notice of injury within 30 days as required by Section 12 of the Act.

(2) That said claimant failed to file claim within one year after the alleged injury as required by Section 13 of the Act; and

(3) That said claimant did not sustain any injuries as alleged or resulting disability therefrom. That at said hearing, the testimony of said claimant was heard and transcribed; that thereafter the

matter came on for an adjourned hearing before said respondent on February 8, 1944, at which time the testimony of claimant and one W. A. McFayden was heard and transcribed, and certain exhibits made a part of the record. That pursuant to oral stipulation, the testimony of additional witnesses was taken through the medium of written interrogatories.

#### VIII.

That thereafter on June 5, 1944 respondent made and entered his Compensation Order and Award of Compensation, a copy of which is attached hereto marked "Exhibit A" and made a part hereof as fully as if set forth at length herein. That said Compensation Order and Award of Compensation is not in accordance with law and with the provisions of said act, in this, that there was not at any time herein mentioned or at any other time, any substantial evidence before said respondent to support the finding that because of said injury, claimant was wholly disabled and that such disability continued at the time of the hearing in this matter held on February 8, 1944. That said Compensation Order and Award of Compensation is furthermore not in accordance with law and with the provisions of said act in this, that there was not at any time herein mentioned or at any other time, any sub- [4] stantial evidence before said respondent to support the finding that the average annual earnings of the claimant at the time of said injury amounted to the sum of \$5,668.00, and in making said finding, respondent failed to act in

accordance with the requirements of Section 10 of said act (33 U.S.C.A. Sec. 910). That in making said order and award, respondent acted capriciously and without giving due regard to the medical evidence submitted in the cause and to the requirements of Section 10 of said act aforesaid.

### IX.

That the Liberty Mutual Insurance Company is joined as a libellant herein because said act provides for the substitution of the insurance carrier for the employer.

### X.

That all the notices and the duly transcribed original notes of testimony taken in the cause and the original compensation order and award of compensation of respondent are in the custody of said respondent, together with all exhibits submitted in connection therewith, and it is necessary for this court to have possession of said records and all of the relevant papers in the possession of respondent in order to determine whether or not the Compensation Order and Award of Compensation of said Deputy Commissioner is in accordance with law.

### XI.

That the libellants will be irreparably damaged if a mandatory injunction annulling and vacating said award is not granted them by this court.

### XII.

That the libellants have not the right to appeal from the aforesaid Compensation Order and Award



of Compensation, and have no remedy available other than the redress requested [5] by libellants in the form and manner specified in said Act.

Wherefore libellants respectfully pray as follows:

1. That said respondent Deputy Commissioner, Wm. A. Marshall, be ordered to deliver to this court of the Clerk thereof, a certified transcript of any claim for compensation made in this matter, all notices, transcribed notes of testimony, exhibits, depositions, Compensation Order and Award of Compensation aforementioned, and all other papers and records, or matters relating to this cause or the hearing thereof.

2. That a time and place be set so that said matters and records may be fully heard and considered by this court.

3. That upon the hearing thereof, that said Compensation Order and Award of Compensation made by said respondent against libellants herein, be annulled, reversed, vacated, and set aside by mandatory injunction or otherwise as provided in the Longshoremen's and Harbor Workers' Compensation Act aforesaid.

4. That libellants be granted such further relief as may be meet and proper in the premises.

[Signed] JOSEPH J. LANZA

[Signed] EGGERMAN ROSLING & WIL-  
LIAMS

Attorneys for Libellants

[Endorsed]: Filed July 5, 1944. [6]

## EXHIBIT "A"

United States Employees' Compensation Commis-  
sion Fourteenth Compensation District

Case No. DB-P-1-8269

In the matter of the claim for compensation under  
Public Law 208, 77th Congress, Act of August  
16, 1941.

TEX M. HADDON,

Claimant,

against

CONTRACTORS, PACIFIC NAVAL AIR  
BASES,

Employer,

LIBERTY MUTUAL INSURANCE COMPANY,  
Insurance Carrier

COMPENSATION ORDER AWARD OF  
COMPENSATION

A claim for compensation having been filed in the Pacific District, and having been transferred to this, the Fourteenth District, by authority of the Commission, and such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law,

The Deputy Commissioner makes the following

FINDINGS OF FACT:

That during the early part of June, 1942, the claimant above named was in the employ of the



employer above named within the Pacific District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as extended by the Act of August 16, 1941, as amended (42 U.S.C., Sec. 1651), to employees of contractors with the United States, and others, and that the liability of the employer for compensation under said Act was insured by Liberty Mutual Insurance Company; [7]

That during the said period of time claimant herein while employed as a plumber and while attempting with other employees to place a long, heavy pipe in an erect position strained his back, causing disability; that thereafter the claimant was given lighter work and continued in such employment until December 17, 1942; that thereafter the claimant because of his injury was wholly disabled and that such disability continued at the time of the hearing in this matter held on February 8, 1944;

That the average annual earnings of the claimant at the time of the said injury amounted to the sum of \$5,668.00;

At the time of the first hearing in this matter the employer and insurance carrier objected to the claim filed herein on the ground that no notice of injury was given the employer within 30 days after the injury, and also on the ground that the said claim herein was not filed within one year from the date of the injury;

I find that the claimant reported the said injury orally to his sub-foreman, and that he thereafter was given lighter work; that the employer's sub-foreman reported the injury to the general foreman; that the insurance carrier had knowledge of the injury in February, 1943, through an agency in Idaho which handled such cases for the carrier; that such agency arranged for the claimant to go to San Francisco in September, 1943, where he was examined by two different physicians for the insurance carrier; that the claimant filed a formal claim for compensation in the Pacific District on September 3, 1943; that the employer filed a report of the claimed injury on July 23, 1943; that in view of these facts the provisions of Section 30 (f) of the Act serve to toll the period of limitation in Section 12 (a), and that the period of limitation in Section 13 (a) did not begin to run until the report of the employer was [8] filed on July 23, 1943; that the failure of the claimant to serve written notice on the employer is excused because the employer had knowledge of the injury;

That as a result of the said injury the claimant has been wholly disabled from December 18, 1942, to and including January 27, 1944; that such disability continued at the time of the hearing held on February 8, 1944, and he is entitled to 58 weeks' compensation at \$25.00 per week for such disability and amounting to the sum of \$1,450.00; that Leo M. Koenigsberg, attorney, has rendered legal service to the claimant of the reasonable value of

\$175.00, and is entitled to a lien on compensation due claimant therefor.

Upon the foregoing facts the Deputy Commissioner makes the following

### AWARD

That the employer, Contractors, Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay compensation to the claimant as follows: \$1,450.00, covering to and including January 27, 1944, less \$175.00 to be deducted therefrom and paid Leo M. Koenigsberg as his attorney; that subsequent to January 27, 1944, the employer and insurance carrier shall pay compensation to the claimant bi-weekly at the rate of \$25.00 per week during the continuance of such disability or the further order of the Deputy Commissioner; that the employer and insurance carrier shall furnish claimant with such medical, surgical and hospital treatment as may be appropriate to the further treatment and cure of his disability.

Given under my hand at Seattle, Washington this 5th day of June, 1944.

WM. A. MARSHALL

Deputy Commissioner, Fourteenth Compensation District. [9]

## PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer and the insurance carrier at the last known address of each, as follows:

Tex M. Haddon, 415 Adams Street, Lewiston, Idaho.

Contractors, PNAB, Attention Mr. Brash, PO Box 857, Oakland 4, California.

Liberty Mutual Insurance Co., 703 Market St., San Francisco, Cal.

Leo M. Koenigsberg, Central Bldg., Seattle 4, Wash.

Joseph J. Lanza, c/o Eggerman, Rosling & Williams, Joseph Vance Bldg., Seattle 1, Wash.

WM. A. MARSHALL

Deputy Commissioner.

Dated June 5, 1944.

WAM:KN [10]

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#962

## CERTIFICATION OF RECORD

Re: Tex M. Hadden, DB-P-1-8269

This is to certify that the record of proceedings before me in the above entitled matter consists of the following documents:

Transcript of testimony taken at a hearing held on December 29, 1943, consisting of 9 pages.

Transcript of testimony at a hearing held on February 8, 1944, consisting of 60 pages.

Original compensation order filed by me on June 5, 1944.

WM. A. MARSHALL  
Deputy Commissioner  
Fourteenth Compensation  
District.

Seattle, Washington, July 6, 1944.

[Endorsed]: Filed Sep. 4, 1944. [11]

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United States Employees' Compensation Commission,  
Before Wm. A. Marshall, Deputy Commissioner,  
Fourteenth Compensation District.

No. DB-P-1-8269

In the matter of the claim for compensation under  
the Longshoremen's and Harbor Workers'  
Compensation Act, as extended by Public Law  
No. 208, 77th Congress, Act of August 16, 1941.

TEX M. HADDON,

Claimant,

against

CONTRACTORS, PACIFIC NAVAL AIR  
BASES,

Employer,

LIBERTY MUTUAL INSURANCE COMPANY,  
Carrier.

TRANSCRIPT OF HEARING

Pursuant to notice the above entitled matter was

heard before Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District, United States Employees' Compensation Commission, at 300 Coleman Building, Seattle, Washington, commencing at the hour of 1:00 o'clock p.m. on December 29, 1943.

Appearances:

Claimant appearing personally and not represented by counsel.

Eggerman, Rosling & Williams, by Joseph J. Lanza, Attorneys for Employer-Carrier. [13]

Deputy Commissioner: In this matter a claim was filed in the Pacific District as established by the United States Employees' Compensation Commission under the provisions of the Longshoremen's and Harbor Workers' Compensation Act as extended by Public Law No. 208, 77th Congress, Act of August 16, 1941, and on September 7, 1943 the entire file, with the approval of the Commission, was referred to this District for such action as might be indicated.

Mr. Lanza: Let the record show that the Liberty Mutual Insurance Company, who is the insurance carrier in this matter, and the Contractor, the Hawaiian Dredging, object to the claim of the claimant filed herein upon the grounds:—first; that no notice of the injury was given to the employer or the insurance carrier within the thirty day period required by law, and the further objection is made that the claim for compensation was not filed within one year from the time the alleged injury took place



and the contractor and the insurance carrier deny generally the alleged injury and alleged disability of the claimant.

Mr. Haddon: How can they make those claims when they investigated this case While it was really a slow operation, I don't know who was at fault, the Morrison-Knudsen Company was notified by the doctor, in the first place, and it was very slow progress getting a reply back. When David Hart from the Adjustment Company came up there [14] it could not have been, I believe, sixty days after this claim was filed so I do not see——

Deputy Commissioner: I will swear you in and then let me question you and you feel free to make any statement you think is warranted.

TEX M. HADDON,

the claimant herein, having been first duly sworn, testified as follows:

Direct Examination

By Deputy Commissioner:

Q. When did the injury occur, please

A. Well, sir, I could not tell you the exact date but from the best of my knowledge it was the last of May or first part of June, 1942.

Q. How did it occur

A. Well, there was three of us standing a long section of extra heavy three inch cast iron stuck up for a vent line for the floor drain in the mess hall at Barber's Point Camp.

Q. In what way were you injured?

(Testimony of Tex M. Haddon.)

A. Well, I snapped something low down in my back. The best I could explain it would be if you would take and break a match in your fingers, and everything turned black for a second but I did not really realize it could be anything and it was pretty hot and I knew I was awfully nervous [15] immediately after and I told Al Clements and Robert Gibbs. I said, "I hurt my back", and sat down on something there and there was a long glimmer before my eyes like a heat wave.

Q. Did you have any medical attention?

A. No, other than I went to taking vitamin pills and kidney pills. I felt my kidneys might be causing something of my back aches and my legs were cramping.

Q. Did you continue to work? A. Yes.

Q. Until when?

A. Until the 17th of December, and it got so my legs would not stay under me to put in a shift.

Q. When did you report your case to anybody representing the employer as being a disability resulting from an injury?

A. Well, no one officially. I talked it over with many of my friends over there that worked with me, but really I did not think up until the time I got this cold and it settled in there and simply got me down that I was actually injured.

Q. After you terminated your employment you came back home? A. Yes.

Q. Did you take up work then?

A. No, sir, I haven't done a thing.



(Testimony of Tex M. Haddon.)

Q. You haven't done a thing? [16]

A. No, sir.

Q. Then, if the matter was not taken up with the employer over there, nothing taken up with the employer over there, when was the first time you did take it up with anybody; was that with Mr. Hart?

A. I went to Dr. White by special request of being forced by my wife to have my back x-rayed.

Q. When did you take it up with the employer?

A. Dr. White is the one that notified Morrison-Knudsen Company.

Q. The first knowledge they had was reported through the Nichols Adjustment Bureau in April of 1943?

A. Dr. White wrote Morrison-Knudsen Company and Morrison-Knudsen Company evidently took it up with the Liberty Mutual Insurance Company.

Q. For the record, I have asked you a lot of questions for the reason that all I have is the record received from Honolulu and that only reached here in September, don't you see, and that is the basis for some of these questions I am asking you?

A. That is perfectly all right; I haven't lied to anybody about it.

Q. Was that in April of 1943 when the matter was brought before them when your condition became worse?

A. No, this x-ray picture was made in February, last February, because when I got back, I got back a year ago yesterday, [17] I went to Spokane and

(Testimony of Tex M. Haddon.)

picked up the wife and brought her back and we visited on the Harbor.

Q. Then, this record shows that the Insurance Company filed a controversy in July of 1943; was any letter written to you with respect to that?

A. No, sir; my understanding was with Frisco was that after they had a talk with me of the case I did not even expect to have to have a hearing on it. That is the impression I was left with over there.

Q. The first information that came with regard to your case is indicated in my letter to the Deputy Commissioner at Honolulu, the letter being dated July 28, 1943. The letter states "that we were enclosing forms 202 and 207 in duplicate received by us today without any covering letter". "Now, we are simply forwarding them to the Deputy Commissioner". That is the first information we had regarding your case. That form 202 is the employer's report; that is the report that the employer has. That was received here on the same day, July 28 of this year. And then there was received in this office on September 13, 1943 a formal claim for compensation signed by yourself. Now, that is dated August 28, 1942; that clearly is in error, is it not?

A. That would be an error; that is positively an error because there was not nothing taken up before this year.

Q. Nothing was taken up before this year? [18]

A. That is right.

(Testimony of Tex M. Haddon.)

Q. Where did you get that claim? Who furnished you with that form, do you recall that?

A. Well, it seems to me it was sent through this office.

Q. No, I think that was sent from the Honolulu office?

A. Yes, that is right.

Q. So the claim itself is dated August 28, 1942, whereas it should have been August 28, 1943?

A. I believe.

Q. Our filing stamp shows it received here in September?

A. That is right.

Q. I want you to tell me when and to whom you made any report concerning your injury; the date and the person and all about it?

A. The exact date I can't.

Q. In relation to the date you were hurt; when did you report to anybody representing the employer?

A. Right immediately.

Q. To whom?

A. To Arthur Lukehardt, the plumbing foreman.

Q. You mean that day?

A. No, sir, just as quick as I got so I could travel at all, that is the first thing I done, I reported to him and he said, "Take it easy and don't lift anything", and they put me to work on the pre-fabricating department because from [19] then on I had trouble doing an honest day's work anyway so I did not do any heavy work. Also F. E. Williams was also a foreman and superintendant. it was kind of settled between him and a man by the name of Cook,

(Testimony of Tex M. Haddon.)

and they knew about it and many of my friends and my room mate from here in Moscow, he can verify every statement I have told you.

(Discussion off Record.)

Deputy Commissioner: The claimant has a paper or papers which he desires to introduce in the record. He is not certain whether he brought such papers with him to Seattle to attend this hearing. Because of this, this record will be held open for thirty days in order to afford opportunity to the claimant to make his presentation. [20]

### CERTIFICATE

State of Washington,  
County of Pierce—ss.

I, H. C. Walker, hereby certify that I am a duly qualified and acting Court Reporter in the State of Washington; that as such Court Reporter I reported in shorthand the above entitled hearing; that thereafter the same was transcribed under my supervision and the within and foregoing is a true and correct transcript of the proceedings had and testimony adduced in said hearing.

Dated this 31st day of December, 1943.

H. C. WALKER

Court Reporter.

[Endorsed]: Filed Sept. 4, 1944. [21]

[Title of Commission and Cause.]

TRANSCRIPT OF TESTIMONY  
AT HEARING

Pursuant to notice, this matter was heard before Wm. A. Marshall, Deputy Commissioner, United States Employees' Compensation Commission, at 300 Colman Building, Seattle, Washington, at 3:00 p.m. on the 8th day of February, 1944.

Appearances:

L. M. Koenigsberg of Koenigsberg & Sanford,  
Attorneys for Claimant.

Joseph Lanza, of Eggerman, Rosling & Williams,

Attorneys for Employer and Carrier. [23]

Deputy Commissioner: This matter comes on as a continuation from a previous hearing.

TEX M. HADDON

claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Koenigsberg:

Q. Will you state your name, please?

A. Tex M. Haddon.

Q. Mr. Haddon, you testified here on a previous occasion? A. That is right.

Q. I will show you what is marked Claimant's Exhibit No. 1 and ask you when you first saw that exhibit?

A. Well, sir, to the best of my knowledge, that

(Testimony of Tex M. Haddon.)

would have been around April, between the 8th and 10th, about that matter.

Q. Did you receive that letter in the mail?

A. That is right.

Mr. Koenigsberg: This letter, Mr. Marshall, is under date of April 6, 1943, and it is on Morrison-Knudsen Company, Inc., General Contractors', letterhead. It is addressed to Nichols Adjustment Bureau, First National Bank Building, Boise.

"Gentlemen: Enclosed is letter received at this office from Dr. E. L. White of Lewiston, Idaho, relating to the claim of Tex M. Haddon, presumably injured in May or June, [24] 1942, while employed by Contractors, Pacific Naval Air Bases.

We also hand you herewith the x-ray received from Dr. White and ask that you communicate direct with Dr. White.

Yours very truly,

CARROLL F. ZAPP."

Mr. Koenigsberg: We offer this exhibit in evidence.

Mr. Lanza: May I ask a question before we go any further?

Mr. Koenigsberg: Sure.

Mr. Lanza: Q. How did you happen to get a copy of this?

The Witness: A. Mr. Hart, he mailed me a copy of all the communications that he received.

Q. You got this through the mails?



(Testimony of Tex M. Haddon.)

A. That is right.

Mr. Lanza: No objection.

Mr. Koenigsberg: Q. Mr. Hart is the attorney and adjuster for the Nichols Adjustment Bureau?

A. At Boise.

Q. I show you Claimant's Exhibit No. 2 and ask you if you have ever seen that exhibit before? You have?

A. Yes.

Q. Did you get it in the same way as you received Claimant's Exhibit 1?

A. Well, sir, I think this was mailed to Dr. E. L. White personally, and he handed this to me in the envelope that he received it in.

Q. This is on a Nichols Adjustment Bureau letterhead, dated [25] April 7, 1943, and is addressed to Dr. E. L. White at Lewiston, Idaho. It says:

"Re: Tex M. Haddon. Dear Dr. White:

Your letter of April 1 in respect to the injuries of Tex M. Haddon, which letter was addressed to Morrison-Knudsen Company, Boise, Idaho, has been referred by that company to our office with a request that we communicate with you concerning the the same.

Our office is usually assigned the job of investigating and checking into these claims. We have received no notice from the insurance company of this man's case. It is possible that it wasn't fully reported while he was on the Islands, which we would assume from the history that you relate concerning your interview with him. If you see Mr. Haddon within the course of the next day or two,

(Testimony of Tex M. Haddon.)

will you ask him to be patient for a few days until we can get some word back from the insurance company, and as soon as we hear from them we will get in touch with you and Mr. Haddon and be able then to advise you more concerning this man's treatment and the status of his claim.

Kindly address further communications in respect to the matter directly to our office until you are advised otherwise.

Yours very truly,

NICHOLS ADJUSTMENT BUREAU  
OF IDAHO

By DAVID F. HART

Attorney & Adjuster."

Mr. Koenigsberg: Q. Now, at about that time or prior to that time did you have a conversation with Mr. Hart in reference to your claim?

A. No, no; he didn't show up till I believe April 25th.

Q. April 25th, that was the first time you talked to him? A. That is right.

Q. At that time, on April 25th, did you take up with him the [26] question of whether or not you should employ an attorney? A. I did.

Q. What did he tell you?

A. Well, sir, he told me it was very seldom that an attorney was necessary in these cases, because you were dealt with fairly and squarely and that I could rest assured of a square deal.



(Testimony of Tex M. Haddon.)

Mr. Koenigsberg: I offer Claimant's Exhibit No. 2 in evidence.

Q. I show you what has been marked as Claimant's Exhibit No. 3 and I will ask you if you received that letter in the mail at about the time it is dated? A. That is right.

Q. This letter is dated May 29, 1943, on letter-head of Nichols Adjustment Bureau, and it is addressed to Mr. Tex M. Haddon.

"Dear Mr. Haddon:

You will recall my visit with you April 25 at Lewiston, regarding your back injury. We have been instructed to see that you are given a thorough examination by an orthopedic specialist and from inquiries we have made would prefer to have that examination made by Dr. Jerome K. Burton of Boise. Such, however, would require a trip down here by you for that purpose.

We would like to know by return mail, if possible, if such a trip could be made. The bus connections down through Grangeville and New Meadows are fairly good for such a trip. It may be too strenuous a trip for you that way. It would probably be better to arrange to make the trip by train. If you can see your way clear to come to Boise we would, of course, have the company remit payment to you of your expenses in that connection. [27] Please give us a reply and we are enclosing self-addressed stamped envelope for your use in that connection. If, however, you know of a good orthopedic special-

(Testimony of Tex M. Haddon.)

ist in that area, kindly advise us as to whom it is. In the meantime, your accident and injury is being checked on in Honolulu and we should have some word before long concerning the same.

Yours very truly,

NICHOLS ADJUSTMENT BUREAU  
OF IDAHO

By DAVID F. HART

Attorney & Adjuster."

Did you, in response to this letter of May 29, 1943, make arrangements to be examined in accordance with the outline of that letter?

A. I went down and consulted Dr. White, and he wouldn't permit me to go by stage; so I had to take the stage to Pendleton, but took the train from Pendleton into Boise. I landed at Boise I believe on June 7th and entered the hospital.

Q. How many days did it take you from Lewiston, Idaho, to Boise?

A. Well, I left Lewiston——

Q. How many days did it take you?

Deputy Commissioner: One day or two days?

A. One day's ride.

Q. How long were you in the hospital there?

A. I believe about a week.

Q. And you were in the hospital that they sent you to?

A. Yes; I preferred going there. [28]

Q. You were examined there by the doctor they furnished?

A. That is right.

(Testimony of Tex M. Haddon.)

Mr. Koenigsberg: We offer Claimant's Exhibit No. 3.

Mr. Lanza: No objection.

Mr. Koenigsberg: Q. I show you what is marked Claimant's Exhibit No. 4 and ask you if that is another letter received in the same fashion? This is addressed to you and you received it in the course of the mail?

A. That is right.

Mr. Koenigsberg: I will offer Claimant's Exhibit 4:

"Nichols Adjustment Bureau of Idaho  
First National Bank Building,  
Boise, Idaho.

June 3, 1943

Mr. Tex M. Haddon  
415 Adams Street,  
Lewiston, Idaho.

Dear Mr. Haddon:

This will acknowledge receipt of your letter of June 1 regarding proposed trip to Boise. I believe that you should plan on about two full days time here in Boise in the event the doctor requires you to go to the hospital for the purpose of this examination.

It will also probably take two full days travel for you to make the trip here and return.

(Testimony of Tex M. Haddon.)

Kindly advise us when you are leaving and when you expect to arrive in Boise.

Yours very truly,

NICHOLS ADJUSTMENT BUREAU  
OF IDAHO

By DAVID F. HART

Attorney & Adjuster." [29]

Q. I show you what has been marked Claimant's Exhibit No. 5 and ask you if you received that in due course of the mails?

A. That is right, I did.

Mr. Koenigsberg: This is on Nichols Adjustment Bureau letterhead, is dated July 12, 1943, and is addressed to Mr. Tex M. Haddon.

"Dear Mr. Haddon:

"We are enclosing herewith Draft No. D61-42546 of the Liberty Mutual Insurance Company, dated July 2, 1943, payable to your order in the amount of \$28.28, which is for reimbursement for your expenses on your trip from Lewiston to Boise and return, for medical examination.

We are not yet in a position to give you any information as to the disposition of your claim for compensation benefits.

The medical reports from the doctors here in Boise have not all been completed, but we will get

(Testimony of Tex M. Haddon.)

in touch with you as soon as we have some information of interest.

Very truly yours,

NICHOLS ADJUSTMENT BUREAU  
OF IDAHO.

By DAVID F. HART,  
Attorney & Adjustor."

We offer Claimant's Exhibit No. 5 in evidence.

Mr. Koenigsberg: Q. I show you what is marked Claimant's Exhibit No. 6, and ask you if you received that in due course of the mails.

A. That is right.

Mr. Koenigsberg: This is a letter on the letter-head of Nichols Adjustment Bureau, dated September 3, 1943, and [30] addressed to Mr. Haddon:

"Tex M. Haddon vs. Hawaiian Dredging  
C61,36616, XC92-14980

Dear Mr. Haddon:

This will acknowledge your letter of August 31st advising that you would endeavor to be in San Francisco the 14th or 15th of September for further examination.

Kindly take this letter with you and contact Mr. Tracy C. Chandler in the Claims Department of the Liberty Mutual Insurance Company, 703 Market Street, San Francisco, California. He will then take care of your from that point on.

We are advising the insurance company that you will be in San Francisco not later than September

(Testimony of Tex M. Haddon.)

15th, so kindly make your plans to be there not later than that date.

You can take the matter of your expenses for the trip up with Mr. Chandler after you arrive there.

We note that your address now is 415 Adams Street, to which we are addressing this communication.

Very truly yours,

NICHOLS ADJUSTMENT BUREAU  
OF IDAHO

By DAVID F. HART

Attorney & Adjuster."

Mr. Koenigsberg: Q. Did you, in connection with that letter and what other correspondence you had had, make any arrangements for a trip to San Francisco?

A. I did.

Q. Who suggested that trip to San Francisco?

A. The letters that I received from Nichols Adjustment Company said that further examinations would be necessary and asked if I was willing to come to Frisco for the examination. I accepted immediately and was there on the [31] 14th day of September.

Q. Now, when you went to San Francisco, did you go to a hospital? A. Yes, sir.

Q. And did you go to the hospital that they advised you to go to? A. Yes, sir.

Q. How long were you confined in the hospital?

A. I believe about four days.



(Testimony of Tex M. Haddon.)

Q. Were you examined by a doctor that they employed?      A. Yes, sir.

Q. Did you return immediately after your examination to your home in Lewiston, Idaho?

A. No, sir.

Q. Was that trip to San Francisco solely at their request or—      A. At theirs.

Q. Solely at their request?      A. Yes.

Q. And the first time they made that request for a trip to San Francisco was September 3, 1943?

A. To the best of my judgment it was, according to the letter.

Mr. Koenigsberg: We will offer this Claimant's Exhibit No. 6.

Q. Now, from the time that Mr. Hart of the Nichols Adjustment Bureau, on April 25, 1943, advised you that it wasn't necessary for you to have an attorney, from that time on [32] did anybody, either Mr. Hart or anybody else in connection with this company, tell you to file a claim with the United States Compensation Commission?

Mr. Lanza: I object to that as immaterial.

The Witness: No.

The Deputy Commissioner: He may answer that for what it is worth.

Mr. Koenigsberg: What was your answer?

A. No, sir.

Q. When was the first time anybody suggested to you that you file a claim with the United States Compensation Commission?

A. When I received the form.

(Testimony of Tex M. Haddon.)

Q. You received a form?

A. I think there was one sent from the Hawaiian Islands I had to fill out, and I believe one from this office. I believe there were two filled out.

Q. You sent those out as soon as you received them?

A. That is right.

Q. When was the first time that you heard that anybody was denying liability solely on the grounds that you hadn't filed a form with the United States Compensation Commission?

A. The first I heard? When I was sitting here for the hearing on the 29th day of December.

Q. That was the first time anybody mentioned it to you at all?

A. That is right. [33]

Q. Now, going into the merits a little bit. Mr. Haddon, you left the United States for the Hawaiian Islands about what date, do you recall?

A. January 10, 1942.

Q. January 10, 1942?

A. I believe so.

Q. And what was your work at that time?

A. Plumber.

Q. How long have you been engaged as a plumber, in the work of plumbing?

A. Off and on for twenty years.

Q. What was your compensation to be in connection with this contract? How much per week?

A. That I never knew.

Q. You didn't know——

A. You mean——

Deputy Commissioner: Your wages?

A. Well, I signed——



(Testimony of Tex M. Haddon.)

Mr. Koenigsberg: If you can answer the questions quickly, without too much explanation. I will ask the questions and you answer directly because we don't want to clutter the record with too much verbiage. Do you know how much you were to receive?

A. The contract called for \$225.00 a month, but the scale was much above that. [34]

Q. How much did you actually earn while working there?

A. From \$109.00 to about \$120.00 a week.

Q. When did you start to work on this job?

A. On the 22nd or 23rd of January.

Q. And what kind of work were you doing?

A. Roughing in plumbing.

Q. How long did you continue?

A. To do that type of work?

Q. Roughing in plumbing?

A. I followed it—we might as well say all the time I was there, because I worked on the pre-fabricating bench after they put me on light duty.

Q. When were you injured, approximately the date?

A. Well, it was in June, I guess, beyond a doubt, because the wife she says the first communication that she received of it she talked it over with the landlady——

Mr. Lanza: This is purely hearsay and I object to it.

Mr. Koenigsberg: It was in June of 1942?

(Testimony of Tex M. Haddon.)

A. June, 1942, yes.

Q. What were you doing at the time you received the injury and how did it occur?

A. There were three of us standing up a long section, 3-inch extra heavy castiron vent line——

Q. And how long was that section?

A. Well, the best I remember it was about 21 or 22 feet long. [35]

Q. How much did it weigh, per foot?

Mr. Lanza: I guess that is immaterial, isn't it?

The Witness: I couldn't tell you exactly.

Mr. Koenigsberg: Q. Have you any idea what the piece weighed; that is, if you know approximately?

A. Oh, about 150 pounds, I believe.

Q. And the three of you were standing up this section? A. Yes.

Q. What happened?

A. We took it up and it was in loose sand and just about the time we got it up I slipped and felt a snap right here in my back just like you broke a match stem and everything went completely black for a little bit and I sat down upon a box or something there—I don't remember what it was—because I couldn't stay on my feet; I was feeling sick and pretty hot and then it got so I could see just a glimmer before my eyes like looking at a heat wave off the sand.

Q. What time of day was this?

A. It was right immediately after dinner be-

(Testimony of Tex M. Haddon.)

cause we thought we would feel a little more equal to the task after we had our noon hour

Q. Then did you work the rest of that day?

A. I went in and talked with Andrew Lukehart. He was the foreman, plumbing foreman.

Q. Yes? [36]

A. Due to the fact that I would either have had to go to Ewa or Honolulu, and that time would all come off my time and a half, you see that I would lose so much, I told Art that as long as I had reported to him I would wait a day or two and if my back got too sore I would go in and have an x-ray taken. So it just naturally lingered along and I kept gradually getting worse, but not so noticeably other than when I would wake up in the morning my back would hurt, my back and my legs cramped on me; and I figured it was due to the——

Q. Just a moment. What happened after you told him and this condition developed? What did he do?

A. Well, he put me out on the prefabricating bench, where I didn't have lifting or stooping to do.

Q. How long after this injury did he put you on this prefabricating bench? How long afterward?

A. They kept me on that.

Q. How long after you had the accident was it that he first put you on the prefabricating bench?

A. Oh, afterwards. That was about, oh, 30 minutes after I had hurt my back.

Q. You mean you didn't even work the rest of

(Testimony of Tex M. Haddon.)

the afternoon on the regular work you had been doing?      A. No, oh, no.

Q. You immediately went on this bench? [37]

A. That is right.

Q. Was that an entirely different type of work than you had been doing, ever since you got on the job?

A. No, I had done prefabricating stuff from the time I hurt my back.

Q. How long had you been doing the other type of work, other than prefabricating?

A. Well, let's see. That would have been from January 23rd until sometime in June.

Q. When did you start on the job?

A. On the particular job that I was hurt on, you mean?

Q. Wasn't it just one job you had on the Islands?

A. I worked on many, many buildings.

Q. I see. When did you start work on this particular job you were hurt on?

A. It would have been in May.

Q. And all the time you were working on this particular job you were doing roughing-in work, and not prefabricating work? Am I correct in that?

A. We prefabricated this job. This is the first one we did prefabricating—that was the whole trouble, that they built up too long sections. That was the first job, and we had trouble because they

(Testimony of Tex M. Haddon.)

wanted us to fill it with sand before they would let us lay our plumbing in.

Q. After you prefabricated when did you start doing this [38] actual erection work?

A. That would have been some time during the fore part of June.

Q. The fore part of June? A. Yes.

Q. Then you hadn't been doing that actual work very long before you were injured? A. No.

Q. Then when you were injured they put you back on prefabricating? A. Yes.

Q. And immediately put you back?

A. That is it.

Q. And in connection with prefabricating did you have to do any heavy lifting? A. No.

Q. None whatsoever? A. No.

Q. Prior to the time you went to work for this company and prior to the time of the accident, what was the condition of your general health?

A. Good.

Q. What about your back and legs?

A. They never bothered me before, either my back or my legs, in my life.

Q. After this injury occurred what difficulty did you exper- [39] ience with your back and your legs?

A. I would wake up and be sore. My back sometimes was so sore I could hardly get up and then whenever I would straighten up cramps would hit me in my legs. The calves of my legs knotted up.

Q. How long did that condition persist?

A. That continued on from that time.

(Testimony of Tex M. Haddon.)

Q. Has it changed since that time to this day?

A. Not too much.

Q. What about the pain in your back?

A. Well, the back it gets awful sore if I am on my feet too long. It feels as if I was cut in two and the two sore edges come together.

Q. Have you experienced that feeling from the time you were injured? A. That is right

Q. Prior to the time you were injured what did you do of an evening when you got through work?

A. Oh, I would play pool and loaf around.

Q. What did you do after the injury?

A. I spent my time on my back.

Q. Went to bed immediately?

A. I did, every bit of time that I could.

Q. Now, this injury occurred in June and you worked on in that fashion for how long over in the Islands? [40]

A. I worked on until the 17th day of December, 1942.

Q. Then you came back to the States?

A. Yes.

Q. Did this disability that you experienced immediately after your injury improve or get worse?

A. Oh, I got a cold that settled in there and that got me down.

Q. Did it ever improve from that time to this?

A. It may be a little better now, although I couldn't say it is, because my whole legs will get so sore I could hardly get on them, a couple of weeks I could hardly stand up.



(Testimony of Tex M. Haddon.)

Q. Now, when you came to the States, did you go to work?      A. No.

Q. Why didn't you go to work?

A. I didn't feel like I could work. I went and got a job, I thought I was all right to go to work, but I see I couldn't.

Q. Where did you go to get a job?

A. At Kent. Mac Boyker Plumbing Company, at Kent.

Q. Washington?      A. Yes.

Q. How long did you work?

A. I didn't go to work at all.

Q. Why didn't you go?

A. Because I got to feeling so rotten that I couldn't work.

Q. Did you actually come to Kent? [41]

A. Yes, I come there with the intention of going to work and I just simply, I couldn't get so I could stay on my feet no length of time, so I went back to Lewiston where I could live cheaper, and rented an apartment to convalesce for a while.

Q. So you took the trip from Lewiston to Kent?

A. No, from Spokane to——

Q. Kent?      A. ——to Auburn.

Q. For the purpose of taking this job?

A. Yes.

Q. At how much per week?

A. \$1.68 an hour.

Q. When you arrived at Kent you couldn't take the job? You felt you weren't capable of doing so?



(Testimony of Tex M. Haddon.)

A. Yes.

Q. Have you ever tried to work since?

A. No, sir.

Q. Are you able to work? A. I am not.

Q. What about your occupational trade? Is there plenty of work available?

A. Seems to be plenty of advertising for it.

Q. Has that condition existed all the time since you came to the States? [42] A. Yes.

Q. How much do you plumbers get—you say you were in the plumbing business before?

A. That is right.

Q. And I suppose you worked with lots of plumbers that you know?

A. Quite a number.

Q. How much do plumbers that have equal skill with you and do the same kind of work you were capable of doing before your injury, how much do they earn approximately?

A. Well, they haven't earned less than \$1.25 an hour, is the smallest scale I have known of since 1923 or 1924.

Q. I am asking you, since you came back from the Hawaiian Islands.

A. I think the pay is \$1.68.

Mr. Koenigsberg: You may take the witness.

#### Cross Examination

By Mr. Lanza:

Q. I think you stated that when you were injured you told Mr. Lukehart, the foreman?

(Testimony of Tex M. Haddon.)

A. That is right.

Q. And it was decided that you were to wait a few days before you went over for medical treatment or examination?      A. Yes. [43]

Q. Why didn't you follow that up?

A. Because this back injury just gradually come on and I thought it was on account of the absence of minerals or vitamins or my discomfortable bed that was causing a lot of my ill feelings.

Q. If you felt that you were injured did you ever think of having x-rays performed?

A. I did. I told them—they wanted to dispatch me back—they wanted me to take 60 days out and dispatch me back and I told them it all depended greatly on an examination, that I had to have an examination and see what I had did to my back.

Q. No one prevented you from having x-rays taken a short time after the injury?

A. No, sir; no one objected to it, no.

Q. You made no request for it?

A. No, no; I didn't.

Q. You just continued to work?

A. That is right.

Q. And you thought it was due to the water you were drinking or——

A. I figured that—they claim there is no minerals on the Islands at all, you see, and I thought probably it was due to the absence of minerals and I even got the idea it might be my kidneys, so I took some Doan's Kidney Pills [44] and I rubbed my back with rubbing alcohol and my legs; and I

(Testimony of Tex M. Haddon.)

took vitamin tablets. I kept thinking—I couldn't get it through my head that I could actually be hurt. That is the truth of it. I couldn't think anything like that could render me unfit as it actually did.

Q. How do you know that was the cause of your subsequent incapacity?

A. Well, sir, when I got back here and a cold settled back there and every time I moved it stabbed me like a knife and I just suffered—well, why should it stay in that particular spot?

Q. A lot of people experience those pains after a cold. How do you know this particular ailment was due to that accident?

A. Why should it happen at that time—since the accident and never happened before?

Q. You were in doubt, weren't you, right after the accident, thinking it was due to minerals lacking or your bed?

A. Yes.

Q. There was some doubt as to whether or not the injury produced your subsequent trouble?

A. There was a doubt in my mind to a certain extent until these doctors——

Q. Has any doctor ever told you this particular—your present condition, I might say, is due to any injury you received? [45]

A. No, I have been to the doctors suggested by the insurance company.

Q. No, Mr. Haddon, Dr. White was not——

(Testimony of Tex M. Haddon.)

A. Outside of Dr. White, and he x-rayed my back.

Q. And the first time that any doctor was suggested was after you went to Dr. White, by the insurance company?

A. The only doctors I went to was suggested by your company since I went to Dr. White, yes, sir.

Q. When you went to Dr. White it was as the result of having contracted a cold and the pain settled in your back?

A. Severe pain settled in my back.

Q. You didn't think at that time it was still the aftermath of that injury?

A. When it hit me in that particular spot where I felt this snap I knew then that was my trouble.

Q. No one prevented you or discouraged you from filing a claim up to that time that you went to Dr. White, did they?      A. No.

Q. As a matter of fact, when you returned to the mainland at Alameda, that was about December 24, 1942, wasn't it?

A. The 28th, I believe.

Q. You recall being handed a statement?

A. Yes.

Q. And in which you were permitted to write down any complaints that you might have against the company for wages due or [46] any complaint of anything that may have occurred?

A. Yes.

Q. Did you notify them at that time that you had been injured?

(Testimony of Tex M. Haddon.)

A. I told them about it at the office, but due to the fact that I didn't fill that out was because my eyes was glimmering, it was glimmering before my eyes, I couldn't fill it out.

Q. Do you recall making a statement at that time that \$39.50 was held out of your wages for account of hotel bills going out? A. Yes, sir.

Q. And also that you stated "my contract was signed on the 23rd and was dated the 24th." I mean one day short? A. That is right.

Q. Your eyes weren't glimmering to prevent your writing that down?

A. I was at the office and that was the time I told them about my back and that I wasn't making out a further statement for employment because it depended greatly on what shape my back was—whether I had to have an examination.

Q. Do you recall signing the statement?

A. Yes.

Q. Do you recall reading it before signing?

A. I tried to read it, and filled it out the best that I [47] could see.

Q. What caused your eyes to glimmer at this particular point?

A. They never stopped from the time I got the back injury.

Q. They were glimmering all the time?

A. Up until about the—I believe the last of May or June.

Q. Of 1942? A. 1943.

Q. Wait a minute. Let's get this straight.

(Testimony of Tex M. Haddon.)

Deputy Commissioner: You are talking about December, 1942, and he is talking about——

Mr. Lanza: Q. I am talking about the time preceding December, 1942. Were your eyes glimmering before that?

A. My eyes glimmered from the time my back was injured.

Q. From June, 1942? A. That is right.

Q. To December at least your eyes were glimmering all the time? A. Yes.

Q. Were you able to do your work under those conditions?

A. Well, it was difficult, very difficult. In fact it ruined a pair of glasses that I only had about five months, and very often I would have to take off my glasses and look and then put my glasses on, and things didn't look right. I had even difficulty in reading my mail from home on account of my eyes.

Q. Do your eyes glimmer now? [48]

A. No. They quit here about, just about two months ago now I got these glasses.

Q. How did that come about? Would it just be present all the time or——

A. Well, it seems that if I tried to see anything and it was difficult to see and it was a strain on the eyes, and then it was just a glimmer like looking at a heat wave off the hot sand.

Q. Would it last a long time?

A. It was more or less constantly. I couldn't read.



(Testimony of Tex M. Haddon.)

Q. How long would it last.

A. Well, if I would look at anything, stare at anything now, I couldn't read the rest of the day at all; and I couldn't read a very little bit till that would start. I would read a line or two, maybe three and it would start from the strain of my eyes.

Q. And have these new glasses improved that?

A. Yes, they have. My eyes has got back now where I hope they will be satisfactory, but it takes a lot of improvement.

Q. Do you recall that part of your statement that referred to concerning your wages that were held out?

A. I don't remember that. I went out there and registered this complaint because I figured that I was that much short and that they was supposed to pay that according to [49] the contract.

Q. When you signed it didn't know what you were signing?

A. The employment sheet?

Q. No, this sheet at Alameda, December 24, 1942?

Mr. Koenigsberg: Why don't you show him the sheet?

Mr. Lanza: I haven't the original. This is a copy.

The Witness: A. That I don't remember. I positively don't remember that.

Mr. Lanza: Q. You recall signing the statement at that time, don't you, reporting about your wages?



(Testimony of Tex M. Haddon.)

A. I remember that I signed that I was short on my wages I think is all.

Q. And you didn't sign anything with respect to the injury?

A. I don't think that she wrote down anything, and I am quite sure that I didn't, but I was talking to her at that time when we went out there about the injury.

Q. That was a girl in the front office that you may have talked to?

A. It was a girl. I wouldn't say what office it was. It was where I was supposed to put in my claim for the money that I figured I had coming.

Q. As a matter of fact, Mr. Haddon, you didn't make any complaint about your injury at that time, did you?      A. Which? To that girl?

Q. Yes. [50]

A. I told her about it, yes.

Q. Did you tell her casually or as a matter of making a claim at that time?

A. Well, I figured that it was as much making a claim as anything because I gave her the answer why I didn't make out or fill out for further employment.

Q. Why didn't you make sure that that was in writing before you turned it in?

Mr. Koenigsberg: I think that is immaterial.

A. Well, I will tell you now that there might have been quite a few things, queer things——

Mr. Koenigsberg: I don't think that is material. I think that is very argumentative, why he didn't

(Testimony of Tex M. Haddon.)

do that. He said he told her about it. I think that is arguing with the witness.

Deputy Commissioner: Yes, that is true.

Mr. Lanza: He signed the statement——

Deputy Commissioner: Your questions as to the statement are all right, but not the reasons.

Mr. Lanza: Q. You recall reading the statement before you signed it?

A. I tried to read it, it was foggy and I couldn't make it out. The lines blurred to where I really couldn't see. If you've got the original you will see probably it wasn't made out right. I knew it wasn't but I couldn't help it. [51] Everybody stam-ped and wanted off the boat and I couldn't see.

Q. You thought you had a claim against the company at that time? A. I did, yes.

Q. You told the girl you had a claim?

A. I told her I wouldn't make out their work sheet for any further employment until I found out what had been done to my back through the injury.

Q. Still you didn't do anything until you went to see Dr. White in April? A. In March.

Q. This letter of Dr. White is dated in April.

A. I think I can show you the receipt for the X-ray pictures of March 8th, if necessary.

Q. And no one prevented you between December 24, 1942 and March from filing a claim, did they?

A. I thought that I had taken all necessary steps that there were to be taken. I had notified the Department.

(Testimony of Tex M. Haddon.)

Q. Answer the question.

Mr. Koenigsberg: Counsel, I think you elicited the answer you are receiving.

Mr. Lanza: Nobody held his arm or anything of that nature.

Mr. Koenigsberg: He doesn't say.

Deputy Commissioner: That is a legitimate inquiry, to find out what his condition was and what he thought during [52] those several months.

Mr. Lanza: Q. Upon returning to Washington, you arrived at Kent and you couldn't take a job because you didn't feel well?

A. That is right.

Q. Was there any doubt in your mind then as to the cause of your disability? A. Yes.

Q. You didn't know yet whether it was due to the injury?

A. No, there was no doubt in my mind then, because my legs simply wouldn't stay under me. Then I looked for an apartment. My legs wouldn't stay under me and I knew then it was the same old stuff.

Q. Due to the injury? A. That is right.

Q. Why didn't you make out some claim or report it to someone at that time?

A. I reported it as soon as I was sick then. To tell the truth I got over there and a cold got me down. As quick as I could get to the hospital to file any claim or make notification of it, I did so.

Q. That was in March, you say, the latter part of March?

(Testimony of Tex M. Haddon.)

A. I was in there too for a month with my back at Lewiston, Idaho, 1734 Seventh Avenue.

Q. You were in Kent, Washington, for how long? [53]

A. I was in Auburn for, I believe, about a week.

Q. Were you on your back then?

A. No, I was still staggering around, but that is about all.

Q. How did you travel? Did you go to Lewiston from there? A. I did.

Q. How did you travel? A. By train.

Q. And that would place you in Lewiston about when? A. Around the 9th day of February.

Q. What were you doing from December 24th, 1942, to that time then?

A. From December 28th, I came—I left the 29th, I guess it was, left San Francisco and went to Spokane, picked up my wife and went to Auburn and visited relations there, came to Seattle from Auburn for a week; went out to Auburn and they talked us into coming over here, so I went to Spokane and brought my stuff over and was going to go to work. I found I couldn't go to work and went back to Lewiston because I could live cheaper there and rented a place to try to get over my illness.

Q. When did you first contact a doctor?

A. I believe it was on March 8th.

Q. So you were there from February 9th to March 8th before you saw a doctor?

A. Yes. [54]

(Testimony of Tex M. Haddon.)

Q. Claimant's Exhibit 1 is dated April 6, Mr. Haddon, from the Morrison-Knudsen Company, in which they stated they were enclosing a letter received from Dr. White in regard to your claim. Do you mean to tell us that Dr. White waited a whole month before he wrote this letter to Morrison-Knudsen? A. Yes.

Q. Have you got anything to show when you went to Dr. White?

The Witness: Where is the receipt for the X-ray I mailed you?

Mr. Koenigsberg: Have I got that?

The Witness: You have got it. It is March 8th.

Mr. Koenigsberg: Yes, that is right.

Mr. Lanza: This indicates that you had an X-ray taken on or about March 8, 1943?

The Witness: That is right.

Mr. Koenigsberg: Signed by—

Mr. Lanza: Mrs. E. L. White. Is that his wife?

The Witness: Yes, sir.

Q. What did he tell you with respect to that X-ray?

A. Well, sir, he thought the fifth lumbar was damaged. But the truth of it was my nerves was shot so bad and I had that cold, that my flesh was just a working and I was shaking all the time, and I couldn't lay still enough on the X-ray table that they could take a decent picture of me.

Q. Did Dr. White or any doctor ever tell you that your [55] condition was due to an injury that you had received a year previously?

(Testimony of Tex M. Haddon.)

A. No. The only thing was that he didn't know, there was nothing he could do for me. That is why they notified them to see what they would do.

Q. At the time you went to Dr. White you were interested in medical treatments of some sort?

A. Yes, sir, I was looking for relief; yes, sir.

Q. Then Dr. White referred you on to the Morrison-Knudsen Company?

A. That is right.

Q. And they in turn referred it to Nichols Adjustment Bureau?      A. That is right.

Q. When you first received a letter from Nichols Adjustment Bureau weren't you concerned principally with receiving medical treatment?

A. Yes, indeed I was.

Q. You didn't have in mind any filing of a claim for lost wages or anything of that sort, as a matter of fact?

A. I hadn't even thought of filing a claim until that got me down.

Q. Didn't you understand all their letters and correspondence were with reference to medical attention?

A. Well there was one there, it states—I can't word it just exactly, but I take it they did say that I was to be dealt [56] with fairly.

Q. You understood then that they were trying to ascertain what was wrong with you?

A. Yes.

Q. To see if they could——      A. Yes.



(Testimony of Tex M. Haddon.)

Q. —possibly suggest any cure?

A. That is right.

Q. Up to that time you didn't even think of filing a claim?

Mr. Koenigsberg: Counsel, I think if a man doesn't know he has a claim or anything of that nature, that hasn't anything to do with the merits of the controversy. Certainly your client wasn't talking about just giving him medical service.

Mr. Lanza: Q. In your direct testimony, if I took down the statement correctly, you said immediately after your injury you talked with Andrew Lukehart? A. That is right.

Q. You talked to him and you thought that as long as you had reported the accident you were in the clear? A. That is right.

Q. Did you know about this act in question at that time, that you were entitled to——

A. The only thing I knew was they had a bulletin posted on the wall that if you were injured in any way you had to [57] report either to the foreman or the dispensary within 24 hours. That is the reason I reported it to him because I thought it was necessary that they knew it and, frankly, I didn't feel I could work right at the time, so I went in and talked it over with him.

Q. Didn't you further know that if you were actually injured on the job you would be entitled to disability benefits?

A. I hadn't really given it a thought. I was under contract and it is a cinch I wouldn't if I



(Testimony of Tex M. Haddon.)

could possibly have stayed on given up \$125 a week for a lousy \$25 a week.

Q. When you got back to the mainland you weren't receiving that wage?

A. I would have been if I could have went to work.

Q. Still you didn't see fit to file a claim?

A. I didn't know. I thought that I had notified them and I had went as far as I knew anything about it. As far as federal unemployment compensation come into the picture it was absolutely greek to me, because I didn't know it existed. I thought I was dealing with the insurance company.

Q. How do you know you were injured in June?

A. That was at the time we was laying in the ground work——

Q. Do you recall——

A. ——on this particular job.

Q. Do you recall when you did file a claim, stating the injury [58] occurred either in May or June?

A. Yes.

Q. Is there still that uncertainty on checkup since?

A. Well, I will tell you. The wife and my roommate convinced me that I was hurt in June, about the middle of June, because she—the first letter that she received from me about it she talked it over with the landlady just before leaving for Spokane on July 3rd.

Q. Who were the individuals working with you at the time?

(Testimony of Tex M. Haddon.)

A. Al Clements was my helper and Robert Gibbs, another journeyman, were working there.

Q. Did they actually see you at the time of the injury?      A. I sat down and talked with them.

Q. Was that before or after you talked with Mr. Lukehart?

A. That was before I talked to Mr. Lukehart.

Q. Do you recall testifying at the first hearing in this cause that you had talked to many of your friends about your injury, but to no one officially?

A. Yes, I had talked it over with many of my friends; in fact, this lumber foreman that furnished me the rubbing alcohol that I spoke about——

Q. Who was that?      A. John March.

Q. Where is he, do you know?

A. No, I don't. Probably in a short time I could tell you [59] where Gibbs and Clements is.

Q. Had you taken vitamin pills before this time?      A. No.

Q. What made you think it was the water or no minerals that produced your trouble?

A. Just hearing them talk about no minerals there, and just general run of conversation.

Mr. Lanza: I believe that is all, Mr. Marshall.

### Redirect Examination

By Mr. Koenigsberg:

Q. You say that the two men working with you were Gibbs and who else?      A. Clements.

Q. You are trying to locate them now?

A. Yes, I wrote them a letter. I wrote to Ala-

(Testimony of Tex M. Haddon.)

meda and got their address, wrote on the 12th and got a reply on the 24th, and I wrote them I believe on the 24th.

Q. 24th of January? A. That is right.

Q. You haven't had any reply to your letters?

A. No.

Q. Where are they?

A. Carpenterville, Oregon, Clements was; and Gibbs was at Houston, Texas. I believe probably I have the receipts here. [60]

Q. That is all right. As I understand your testimony on cross examination, when Dr. White examined you he told you that you had some difficulty in your lumbar spine?

A. That is right.

Q. And he didn't tell you, as you stated, he didn't tell you that that had anything to do with the accident, is that correct?

A. No, he didn't tell me.

Q. Is he an orthopedic man, is that his specialty?

A. No, he is a medical doctor.

Q. General practitioner. You have not been to any orthopedic doctor on your own account?

A. No, sir.

Q. In connection with that, Mr. Marshall, I had written to Mr. Haddon to come here on the 4th and I thought he would be here in time to have an examination by Dr. Wyckoff. I would like to have permission to have an examination by an orthopedic man, either Dr. Wyckoff or somebody else, and introduce that in the record.

(Testimony of Tex M. Haddon.)

Deputy Commissioner: That will be arranged.

Mr. Lanza: I would like to file the report of Dr. O. W. Jones, Jr., San Francisco, dated September 17, 1943.

Deputy Commissioner: That will be Employer's Exhibit A.

Mr. Lanza: And the letter or report of Dr. Frederick G. Linde, of San Francisco, dated September 22, 1943. [61]

Deputy Commissioner: That will be marked Employer's Exhibit B.

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W. A. McFADYEN,

a witness called on behalf of Claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Koenigsberg:

State your name.

A. W. A. McFadyen, F-a-y-d-e-n.

Q. Mr. McFadyen, where do you reside?

A. Moscow, Idaho.

Q. Did you come over here especially for this hearing? A. I did.

Q. When did you first meet Mr. Haddon?

A. When we left for the Islands, that was December 21, 1941.

Q. You were both employed by the same employers?

(Testimony of W. A. McFadyen.)

A. Same company, Morrison-Knudsen of Boise.

Q. What was your occupation?

A. Plumber.

Q. And his occupation?

A. He was a plumber.

Q. But you had never known him?

A. No, never known him before, other than I met him the day we signed up, and he went and took his medical or he let me take my medical examination ahead of him because I was [62] in Moscow and he was living then in Lewiston and he went down the next morning. I went and took my examination the evening before.

Q. When you went on the job where did you first go to work for this company in the Hawaiian Islands?

A. What they called Barber's Point, on Oahu.

Q. Did you work right alongside of him?

A. No, I didn't. I roomed with him all the time; but there was a few days, possibly two weeks out of the time we were over there that we were actually working side by side. We were working on different jobs. That is, when we first went over we were working on a big latrine there and then I went on another job and then I came back and we were both working, we were building barracks. In these barracks he was working some and I was working and I saw him every day, you know, while working. And then we roomed together all the time.

Q. So you saw him every night?

(Testimony of W. A. McFadyen.)

A. I saw him every day except six or seven days I was in the hospital over there, from the time we left Lewiston until we got back to Spokane a year later.

Q. You were gone about a year altogether?

A. A year and ten days.

Q. Prior to the time he was injured what was his general condition, so far as you could see? [63]

A. How do you mean?

Deputy Commissioner: His health?

A. Oh, yes. He always seemed peppy and full of life, a hard worker up until, as I remember, along the latter part of June, he started to complain about his back and his legs bothered him, gave him cramps at night when he would lay down.

Q. Up to that time did he complain about his back?

A. No, he never mentioned it that I can recall at all.

Q. Did he walk and work normally?

A. Yes.

Q. What would you say then as to his general ability to work and general physical condition, so far as you could see up to that time?

A. Well, up to that time—I think there was possibly 50 or 60 men living at the same barracks, we all worked together, and Tex was considered one of the hardest workers on the project at the time.

Q. Did he, on the day that the alleged injury occurred, tell you about it?



(Testimony of W. A. McFadyen.)

A. I won't say whether it was the day it happened or shortly afterwards. I know I remember him saying about lifting this pipe, but whether it was that night when he came in or the next night when he came in after work, that him and two other boys were lifting this piece of saw pipe that [64] they mentioned about his back.

Q. After that was there any change in his general conduct, in the general way he worked or——

A. Yes, there was. The fact is that up until that time—I don't know whether you have been in a camp where a lot of men have to make their own amusement to a certain extent and Tex was out with us, you know, we would get out and monkey around, but after that happened I noticed that he stayed on his bunk, just about as soon as he left the mess hall at night. I was working on a maintenance job at that time and I wasn't in the barracks some nights, as I would otherwise. Sometimes he would work in the mess hall or something like that, but he seemed to stay on his bunk an awful lot from that time until we got home.

Q. Was there anything else he did from that time on which he didn't do before?

A. He never went uptown, never left camp. We used to go to Honolulu on days we had off and we had possibly, oh, I would say it was about a mile or a little better from where the camp was to where we caught a bus, and I know him and I would start walking off, and we used to try to walk the legs



(Testimony of W. A. McFadyen.)

off the other, and after that he didn't have any get-up and go about walking, and he would say, "Heck, what's all your hurry?" I noticed that.

Q. Did he complain about his back or legs after that? [65]

A. He used to complain about his legs cramping on him. , That is, we would go to bed and I used to really wake up laughing at him because he would hop out of bed and have a cramp in the calf of his leg and it seemed to go down into the foot and go up into what I presume they call a charley-horse. As to that, these cots we were sleeping on were just—they weren't coil springs, just a flat spring cot, and he used to take a jacket that he had there and put it, try to put it up under the mattress to give some support to his back to kind of push him up that way. I know he used to be cussing the Filipino boy who looked after the rooms for always pulling the jacket out from under the mattress, because every night he would have to go and dig up his jacket and put it back under. It seemed to relieve his back by having it under him. But up to that time he had never had, never used that or complained about it at all.

Q. Did he change the type of work he was doing immediately after the report of the injury?

A. Yes, the foreman that he had put him on bench work, that is, prefabricating. I presume you understand what we mean by prefabricating in plumbing, where all the joints are put together, the elbows and bends and t's and y's. They are all

(Testimony of W. A. McFadyen.)

small pieces and done on a bench by standing them up and connecting them by pouring through lead. [66] The work is a lot lighter than where you are wrestling possibly two or three or four lengths of 5-foot sawpipe. Four inch sawpipe, I presume, weighs around 10 or 12 pounds to the length, you know. You get four or five of those together, they weigh up pretty fast, especially when you've got lead poured in that. I know he was on prefabricating from then on. Art promised him that. I wasn't working on that job but I knew the fellows working with him and I knew he was working on this prefabricating bench from that time.

Q. And from June he never went off the fabricating?

A. Not that I know of, other than possibly working a water bench. We were working, we tried to leave the job on the job; instead of talking about it at night when we got back in. That was one thing that bunch around our barracks agreed on was leaving the job at night until you went on it the next morning, because it used to get so you were working 24 hours a day if you did so.

Q. Outside of these complaints as to his back and these cramps in his legs, which was his general conduct as to energy and vitality? Did you notice any difference?

A. He just didn't seem to have the pep that he had before. Him and I used to scuffle a little bit and after that we never did. We did a lot of jawing at each other but however we never did scuffle.

(Testimony of W. A. McFadyen.)

I noticed there were two or [67] three other boys, younger boys along about 20 or 21 and they used to come in and wrestle around with Tex. They all liked him and after that he just wouldn't—didn't want to be scuffling at all.

Q. Now, when you got back, did you go to work?

A. I went to work about three weeks after I got home.

Q. And how much would you consider that Tex, from what you know about his workmanship, would you consider that he would be capable of holding the same kind of jobs that you hold?

A. Certainly.

Q. How much have you been earning since you came back to the States?

A. \$1.65 an hour for a 40-hour week, double time for overtime, and we were working either 8 or 9 hours a day. That is 5 days a week and sometimes 6, but my checks would average around \$96 a week.

Q. That has been your average ever since you came back?

A. Yes, for 10 months last year. I think that would just about average out there, 10 months, because I took leave off and went up and helped my dad during harvest season, and I don't know just exactly the figures of what I made last year. My wife looks after that for income tax.

Q. Do you know anything about when you are

(Testimony of W. A. McFadyen.)

injured on the job about filing a claim with the compensation commission? [68]

Mr. Lanza: I submit that is immaterial.

Deputy Commissioner: It is what claimant knew that counts.

Mr. Koenigsberg: You may inquire.

#### Cross Examination

By Mr. Lanza:

Q. Where do you reside at the present time?

A. Moscow, Idaho.

Q. Do you have an address there?

A. 109 South Jackson. I moved from Spokane there on the 11th of December.

Q. 1943?

A. Yes, just a month and a half ago.

Q. After moving to Moscow, have you seen Mr. Haddon frequently?

A. No, I haven't seen him at all.

Q. When did you see him the last time before making your trip to Seattle?

A. I hadn't seen him at all since we left the boat after we got off the train at Spokane.

Q. How do you happen to be here?

A. He wrote me. He called me on the phone. He wrote me a letter about a week ago, no, more than that. You wrote me a letter, I don't know just what date that was and Tex had wrote me then that you were going to write me.

Q. This was all very recently? [69]

A. Yes, since I went to Moscow.

Q. You didn't talk over this case before that?

(Testimony of W. A. McFadyen.)

A. Positively. I didn't know anything about it, other than that one of the—there was a man late last spring—I wouldn't mention dates because I don't remember when it was, but he came and saw me last spring sometime. I feel quite certain in the spring because I was working at the rolling mill at the time and he asked me if I remembered about Tex Haddon getting an injury over in the Islands and I said yes and I was just going to work and was in a hurry and he met me at the elevator when I come in that morning. Other than that, that was all that was mentioned. We talked a few minutes about it.

Q. Did you see Mr. Haddon after returning to the United States?

A. Him and I came from the Islands to Spokane together and I left him, that was New Year's, day before New Year's, wasn't it a year ago.

Q. 1943? A. Yes.

Q. Then you went on to——

A. I went on to Moscow a couple of days afterwards. I stayed in Spokane and visited a couple of days with my sister and wife. My wife had been living in Moscow all the time I was away and we went down there for 3 weeks.

Mr. Koenigsberg: This is so prolix now. [70]

Q. Have you been corresponding with Mr. Haddon?

A. I think I have had two letters from Mr. Haddon in the last year. One time he mentioned that he was down—his back was bothering him, and he had wrote that letter to me in Moscow not

(Testimony of W. A. McFadyen.)

knowing that I had gone to Spokane to work.

Q. About his complaints on the job. Did he lead you to think it was due to an injury he received or due to his bed and the lack of minerals in the water.

A. He mentioned at the time when he was lifting that pipe that he strained his back. Then he mentioned, well, maybe it was a case of where the darned bed is, as he mentioned it, if it was a little more comfortable maybe his back would feel better. And I do recall his mentioning something about if there was some mineral in this water it might help all the fellows, because we were all getting sluggish from the continual, every day was the same in the weather.

Q. It was pretty hard work, wasn't it?

A. It was pretty hard work.

Q. And you woke up many mornings with pains in your legs?

A. No, sir. I went from 131 to 167 pounds, before I got a throat ailment over there, and then I lost weight.

Q. Were you with Mr. Haddon when he reported at Alameda to sign off?

A. We didn't report at Alameda to sign off. We signed off at [71] Barber's Point.

Q. When you arrived at the mainland didn't you have to call at the contractors.

A. They met us on the boat and gave us a check for traveling, and that was all there was to it.

Q. You didn't go to the office to file any statement as to whether you had any complaints or not?



(Testimony of W. A. McFadyen.)

A. Absolutely no.

Q. When you got off the boat did you get off the boat with Mr. Haddon? A. Yes.

Q. Where did you go with him, do you recall?

A. After we got off the boat we went to look for a hotel. We had to go to Oakland, five of us took a taxi to Oakland to a hotel. The next day I went over and got the grips and our boxes and brought them back to Oakland, and so we left that night for Spokane.

Q. Were you with him substantially all the time? A. Absolutely.

Q. Do you recall him going to any office of the contractor to file any statement?

A. Wait a minute—I believe he went out to Alameda. It wasn't a statement on his back, I don't believe. It was over a claim on board and room—which I had received before I left Honolulu. And he went out, I believe and put [72] in a claim for that in Alameda the day we left. I wasn't with him at that time.

Q. Did he discuss making any claim about his injury at that time? A. I don't know.

Q. Do you know whether—

A. No, he didn't. I am absolutely certain he didn't say anything to me about making a claim, but I think now—I may be mistaken on this, but I have an idea Tex went out or was talking about making a claim for board and room for ten days in Oakland that he didn't get and I got before we



(Testimony of W. A. McFadyen.)

went to the Islands, which we were supposed to get. If you didn't holler for it you didn't get it.

Q. Did you discuss with him at any time the advisability of receiving medical attention on the Islands?

A. I don't know whether this should be put on record. The medical attention we got over there was nil. The first doctor we had on the project was under the influence of liquor practically all the time he was there and they let him go. The next doctor that came on the project—this is only hearsay, so far as the statement I am making now is concerned.

Q. I would rather not put it in if you can't testify to it.

A. But I can get people who could testify.

Mr. Koenigsberg: You made the inquiry. Let him testify. [73]

Mr. Lanza: I don't want to hear hearsay.

The Witness: This part is. This particular doctor didn't have a license. I don't know how good a doctor he was or anything else.

Deputy Commissioner: That isn't responsive. He wanted to know whether you talked to Tex about medical aid.

A. No, I don't believe there were. No, I don't believe I advised him or said anything about him going and getting medical attention.

Q. Did he have any trouble with his eyes during this time?

(Testimony of W. A. McFadyen.)

A. He used to complain that he would have to get his glasses changed pretty quick.

Q. Did you ever see him reading anything nights?

A. Not very often. Once in a while he would read the paper but—I don't believe that all the time we were around there that I ever saw Tex read a book.

Q. Did he get a paper every day?

A. We just used to get the paper when we could get hold of it. None were delivered there, but if somebody came in with it we got it.

Q. Did you ever observe him when his eyesight was so bad he couldn't see what he was reading?

A. No, I wouldn't say that I ever noticed whether he could see what he was reading or not. As I say, he didn't read practically anything at all.

[74]

Mr. Lanza: I believe that is all.

Redirect Examination

By Mr. Koenigsberg:

Q. That chap that you say came around inquiring last spring about this accident, did he tell you with what company he was associated?

A. He mentioned the insurance company, but I wouldn't say what one, because I don't recall.

Q. And he asked you something about the injury?

A. He asked me if I could recall about Tex Had-

(Testimony of W. A. McFadyen.)

don being injured or hurt his back over there and I said yes.

Recross Examination

By Mr. Lanza:

Q. Now, Mr. McFadyen, that wasn't last spring, but last December or November?

A. No. No, it wasn't.

Q. Are you sure of that?

A. I will swear to that.

Q. When you speak of spring, what do you mean by spring? What have you in mind?

A. Any time before June.

Q. You think it was before June?

A. I feel certain it was.

Q. Of what year? [75] A. Last year.

Q. Of 1943?

A. Yes. Now, as I remember, all I can remember is where I was working at the time is what I am going by on when it was.

Q. Were you in December or November, 1943, were you in Spokane in December, 1943?

A. Yes, 1943.

Q. You were up there?

A. Up until the 11th of December.

Q. Of 1943? A. Yes.

Q. Last year?

A. Last year. I was out of Spokane from August, I think the 2nd until about the 15th, and I was in there a week and then I was out again for 11 days in November.

Q. You don't know who that individual was?

(Testimony of W. A. McFadyen.)

A. No, I don't. He introduced himself but I wouldn't recognize the man again if I saw him, because, as I say, he came one morning at seven o'clock when I was going to work.

Mr. Lanza: I think that is immaterial anyway. That is all. Mr. Marshall, we would like to have some depositions taken or the hearing continued to take testimony of these other parties that couldn't possibly attend. The foreman, for instance, Mr. Lukehart at Honolulu; Mr. Williams at Los Angeles; the representative of the P. N. A. B. at Oakland; [76] also, a representative at Pearl Harbor; and Mr. Gibbs at Houston, Texas. Could that possibly be done?

Mr. Koenigsberg: We will stipulate that we may have ten days to draw up the interrogatories and serve them, ten days to draw up cross-interrogatories and serve them, and forty days after that for the depositions to be here in the Deputy Commissioner's office.

Mr. Lanza: And if we have any objection to the form of the question we will have to take it up with Mr. Marshall. And is it stipulated that we can forward them on to a notary public directly?

Deputy Commissioner: Yes. The case will be set over then to sixty days from today, which is Saturday, April 8th.

Mr. Haddon will go to Dr. Wycoff's office tomorrow at three for an examination. A copy of the report will go to each one of you.

(Hearing closed) [77]

## EMPLOYER'S EXHIBIT A

Howard C. Naffziger, M. D.

O. W. Jones, Jr., M. D.

Howard A. Brown, M D.

384 Post Street

San Francisco, U. S. A. .

September 17th, 1943

Liberty Mutual Insurance Company,

Central Tower, 703 Market St.,

San Francisco, California.

Re: Mr. Tex Haddon.

Dear Mr. Chandler:

This patient is at the Franklin Hospital under observation. He entered on September 15th, 1943. The following history was obtained from him. He states that he was attempting to lift some heavy pipe-line, while working in Hawaii and while lifting, he felt something 'snap' in his back and everything went black for a while, but he was not unconscious. He sat down for a little while and then reported the incident to the foreman, and was assigned to a job which did not require him to lift. He noticed weakness in his legs, which has persisted up to several weeks ago. The back pain persisted constantly after the accident, and was especially bad in the morning on arising. He noticed occasional cramping in his calves, especially in the left; this also occurred chiefly in the mornings. He returned to the mainland on December 28th, 1942, with symptoms persisting.

He says that on February 10th, 1943, he developed a severe cold or touch of influenza, which "settled in my back and felt like a knife stuck in the back." Since that time, his symptoms have been worse until the past two weeks, when a little improvement has been noted. In February, 1943, he complained of pain in the right shoulder which radiates down the right arm. He figures that the condition of his left shoulder is associated with his low back trouble—he says it is "like lightning" spread from the back to the shoulder. He has had difficulty in raising the right arm above the head and in rotating it. He says that for a period of six weeks after returning to the mainland he had difficulty with his memory—when I asked him what this was due to in his opinion, he says that "the nerve was out of order." He says that he has also had episodes of chills brought out [78] by the cold, but he recalls no fever; during that time, the "blood often rushed to his head" and on one occasion gave him black eyes.

Family history is not contributory. He has been married for twenty years, has two sons living and well.

Past history: he says that he had "a dose of chancres" in 1918—treated in the Army for a week or ten days. His blood Wasserman was negative. He denies any previous accidents or operations.

Systems: he says he has astigmatism in the left eye.

Examination shows a well developed and nour-



ished male, who is obviously nervous but in no discomfort. He has a normal gait.

Head and neck—negative. Head and neck movements normal.

Cranial nerves were within the limits of normal. The retinal vessels show considerable tortuosity. He has an early arcus senilis on the left.

Mouth—no teeth. Throat—negative.

Lungs—clear.

Heart sounds clear. Blood-pressure 136/70.

Reflexes: all deep and superficial reflexes were equal and hyperactive. There were no abnormal reflexes.

Sensation, deep and superficial—normal throughout the entire body.

The various cerebral and cerebellar lobe tests—normal.

Motor power—normal.

Posture: the spine is straight. Weight-bearing is equal on the two lower extremities. Back movements are performed satisfactorily, he gets his finger-tips eight inches from the floor and at this point he complains of some tightness in the backs of his thighs.

He guards all movements of the right shoulder by [79] tightening his muscles, and he goes through facial contortions, and he performs peculiar movements of the left shoulder when attempting to carry out a simple movement.

A review of the medical file shows that at no time have any of the examiners found any alteration in this man's central or peripheral nervous system,



although some of the examiners have suggested that he has some disturbance in his nervous system.

After obtaining the original history from this patient and then having examined him, and again discussing the history with him, he informs me that he did not see a physician until February, 1943. He informs me that it was either late in May or the beginning of June, 1942 when he had the alleged strain; he continued to work on his job, but rested as much as possible. The contract on which he was working concluded in December, so he returned to the States. He said that he had not intended to return to the Mainland—that he planned to come back in May or June of this year, but came back earlier because of the alleged buckling under him, and pain in the back on stooping. He has not returned to work since arriving on the Mainland.

Discussion: this patient has no positive objective neurological findings. There are no findings at this time which would enable one to make a diagnosis of dislocated nucleus pulposus.

There is nothing to indicate that he has any pressure within his spinal canal. It is to be noted in the above report that, although he says he strained his back some time late in May or early in June, 1942, he did not seek medical advice until February, 1943.

From a neurological standpoint, this patient has

no disability, and I can recommend no further form of investigation or therapy.

Sincerely yours,

O. W. JONES, Jr.

O. W. Jones, Jr., M. D.

Drs. NAFFZIGER, JONES,  
BROWN

OWJ/FM [80]

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EMPLOYER'S EXHIBIT B

Frederick G. Linde, M. D.

Medico-Dental Building

490 Post Street

San Francisco

September 22, 1943

Liberty Mutual Ins. Co.,  
Central Tower,  
San Francisco, California.

Re: Tex Haddon

Gentlemen:

On September 16, I examined at your request, at the Franklin Hospital, Mr. Tex Haddon, aged 48, occupation—plumber—with reference to his present condition and its possible relationship to an alleged injury sustained on or about June 1, 1942.

The History given by the patient was to the effect that on that date, while in Hawaiian Islands lifting a heavy object, something “snapped” in his low-back. He noted no pain immediately but “was unable to handle his legs properly.” He con-

tinued with lighter work until December 18, 1942 and did not seek medical advice during this period, although he states that he had some pain in his back during that time and he would note "cramps" in the calves of his legs.

He returned to the mainland on December 28, 1942 and shortly thereafter contracted a respiratory infection which "settled in his back." This was allegedly productive of severe pain. He then consulted a local doctor in Lancaster, Idaho where X-rays were made, and shortly thereafter he was hospitalized for a few days in Boise, Idaho. He states that he has received no treatment for his condition, and has not worked since his return to the mainland. He claims some recent improvement.

About the middle of February 1943, without further injury, he noted the onset of pain in his right shoulder. This is the first time symptoms were ever noted in that area.

Present Complaints consist of "some pain" in his low-back following prolonged weight-bearing and during spinal movement. He claims inability to bend forward to reach his shoes with ease. Pain is not referred into the lower [81] extremities at the present time, and he claims good control of his legs.

He claims pain in the right shoulder at times.

Past History elicited no pertinent information.

Examination—The patient is a well-developed and nourished individual, standing in poor spinal posture. He pointed to the center of the lumbosacral region as the site of his discomfort. Mini-

mal scoliosis was present. He restricted movements of his spine considerably, forward bending being checked with fingertips 14" from the floor. None of these movements, however, were accompanied by any muscle spasm and I gained the impression that there was some element of exaggeration. There was 1½" atrophy of the muscles of the left thigh and calf. Patellar reflexes were equal.

The right shoulder showed some generalized restriction of motion but otherwise the extremity was entirely negative.

X-Rays—Report of early X-Rays showed no evidence of bone pathology.

Discussion—From an orthopedic point of view this patient has no disability whatsoever. He restricted all spinal movements considerably but no muscle spasm accompanied these movements, and I gained the impression that there was a considerable element of exaggeration.

If he has no intraspinal pathology, I believe that there is no incapacitation whatsoever and the patient is capable of working at his usual occupation without harmful effect.

The condition of his shoulder is probably due to a subacromial bursitis which bears no relation to the current trauma.

Yours very truly,

F. G. LINDE

Frederick G. Linde, M. D.

FGL:nh

cc to Dr. O. W. Jones [82]

CERTIFICATE

State of Washington  
County of Pierce—ss.

I, Bertha Zimmerman, do hereby certify that I am a qualified and acting court reporter in the State of Washington; that as such reporter I reported in shorthand the above entitled cause and that thereafter I transcribed the same; and that the within and foregoing is a true and correct transcript of the stenographic notes taken by me during the hearing in the above entitled cause.

Dated this 14th day of February, 1944.

BERTHA ZIMMERMAN

Court Reporter in and for the State of Washington, residing at Tacoma.

[Endorsed]: Filed Sept. 4, 1944. [83]

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[Title of Commission and Cause.]

COMPENSATION ORDER  
AWARD OF COMPENSATION

A claim for compensation having been filed in the Pacific District, and having been transferred to this, the Fourteenth District, by authority of the Commission, and such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law,

The Deputy Commissioner makes the following

## FINDINGS OF FACT:

That during the early part of June, 1942, the claimant above named was in the employ of the employer above named within the Pacific District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as extended by the Act on August 16, 1941, as amended (42 U.S.C., Sec. 1651), to employees of contractors with the United States, and others, and that the liability of the employer for compensation under said Act was insured by Liberty Mutual Insurance Company;

That during the said period of time claimant herein while employed as a plumber and while attempting with other employees to place a long, heavy pipe in an erect position strained his back, causing disability; that thereafter the claimant was given lighter work and continued [84] in such employment until December 17, 1942; that thereafter the claimant because of his injury was wholly disabled and that such disability continued at the time of the hearing in this matter held on February 8, 1944;

That the average annual earnings of the claimant at the time of the said injury amounted to the sum of \$5,668.00;

At the time of the first hearing in this matter the employer and insurance carrier objected to the claim filed herein on the ground that no notice of injury was given the employer within thirty days after the injury, and also on the ground that the



said claim herein was not filed within one year from the date of the injury;

I find that the claimant reported the said injury orally to his sub-foreman, and that he thereafter was given lighter work; that the employer's sub-foreman reported the injury to the general foreman; that the insurance carrier had knowledge of the injury in February, 1943, through an agency in Idaho which handled such cases for the carrier; that such agency arranged for the claimant to go to San Francisco in September, 1943, where he was examined by two different physicians for the insurance carrier; that the claimant filed a formal claim for compensation in the Pacific District on September 3, 1943; that the employer filed a report of the claimed injury on July 23, 1943; that in view of these facts the provisions of Section 30 (f) of the Act serve to toll the period of limitation in Section 12 (a) and that the period of limitation in Section 13 (a) did not begin to run until the report of the employer was filed on July 23, 1943; that the failure of the claimant to serve written notice on the employer is excused because the employer had knowledge of the injury;

That as a result of the said injury the claimant has been wholly disabled from December 18, 1942, to and including January 27, 1944; that such disability continued at the time of the hearing held on February 8, 1944, and he is entitled to 58 weeks' compensation at \$25 per week for such disability and amounting to the sum of \$1,450.00; that Leo M. Koenigsberg, attorney, has rendered legal service to the claimant of the reasonable value of \$175.00



and is entitled to a lien on compensation due claimant therefor.

Upon the foregoing facts the Deputy Commissioner makes the following

### AWARD:

That the employer, Contractors, Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay compensation to the claimant as follows: \$1,450.00, covering to and including [85] January 27, 1944, less \$175.00 to be deducted therefrom and paid Leo M. Koenigsberg as his attorney; that subsequent to January 27, 1944, the employer and insurance carrier shall pay compensation to the claimant bi-weekly at the rate of \$25.00 per week during the continuance of such disability or the further order of the Deputy Commissioner; that the employer and insurance carrier shall furnish claimant with such medical, surgical and hospital treatment as may be appropriate to the further treatment and cure of his disability.

Given under my hand at Seattle, Washington, this 5th day of June, 1944.

WM. A. MARSHALL

Deputy Commissioner,  
Fourteenth Compensation  
Commission District

PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer and the insurance carrier at the last known address of each, as follows:

Tex M. Haddon, 415 Adams Street, Lewiston, Idaho.

Contractors, PNAB, Attention Mr. Brash, PO Box 857, Oakland 4, California.

Liberty Mutual Insurance Co., 703 Market St., San Francisco, California.

Leo M. Koenigsberg, Central Bldg., Seattle 4, Washington.

Joseph J. Lanza, c/o Eggerman, Rosling & Williams, Joseph Vance Bldg., Seattle 1, Washington.

WM. A. MARSHALL

Deputy Commissioner.

Dated June 5, 1944.

WAM:KN

[Endorsed]: Filed Sept. 4, 1944 [86]

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CERTIFICATION

I hereby certify that the attached claimant's exhibits Nos. 1, 2, 3, 4, 5, and 6, and the attached employer's exhibits A and B, together with the Interrogatories and Answers by David F. Hart dated March 28, 1944, the Interrogatories and Answers by Arthur E. Lukehardt dated April 28, 1944, the Interrogatories and Answers by Sanford L. Platt dated April 20, 1944 and the Interrogatories and Answers by Cedric L. Brash dated March 21,

1944 are a part of the record or proceedings before me in this case.

WM. A. MARSHALL

Deputy Commissioner

Fourteenth Compensation  
Commission

Seattle, Washington

August 9, 1944

[Endorsed]: Filed Sep. 4, 1944. [87]

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CLAIMANT'S EXHIBIT No. 1

Morrison-Knudsen Company, Inc.

General Contractors

Principal Office

319 Broadway, Boise, Idaho

Carroll F. Zapp

Secretary

April 6, 1943

Nicholas Adjustment Bureau

First National Bank Building

Boise, Idaho

Gentlemen:

Enclosed is letter received at this office from Dr. E. L. White of Lewiston, Idaho, relating to the claim of Tex M. Haddon, presumably injured in May or June, 1942, while employed by Contractors, Pacific Naval Air Bases.

We also hand you herewith the X-ray received

from Dr. White and ask that you communicate direct with Dr. White.

Yours very truly,

CARROLL F. ZAPP

CFZ:vg

Enc.

cc: Dr. E. L. White, Lewiston, Idaho [88]

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CLAIMANT'S EXHIBIT No. 2

[Letterhead of Nichols Adjustment Bureau]

April 7, 1943

Dr. E. L. White  
White Hospital  
Lewiston, Idaho

Re: Tex M. Haddon

Dear Dr. White:

Your letter of April 1 in respect to the injuries of Tex M. Haddon, which letter was addressed to Morrison-Knudsen Company, Boise, Idaho, has been referred by that company to our office with a request that we communicate with you concerning the same.

Our office is usually assigned the job of investigating and checking into these claims. We have received no notice from the insurance company of this man's case. It is possible that it wasn't fully reported while he was on the Islands, which we would assume from the history that you relate concerning your interview with him. If you see

Mr. Haddon within the course of the next day or two, will you ask him to be patient for a few days until we can get some word back from the insurance company, and as soon as we hear from them we will get in touch with you and Mr. Haddon and be able then to advise you more concerning this man's treatment and the status of his claim.

Kindly address further communications in respect to the matter directly to our office until you are advised otherwise.

Yours very truly,

NICHOLS ADJUSTMENT  
BUREAU OF IDAHO.

By DAVID F. HART

Attorney & Adjuster.

DFH:J [89]

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CLAIMANT'S EXHIBIT No. 3

[Letterhead of Nichols Adjustment Bureau.]

May 29, 1943

Mr. Tex M. Haddon  
1734 7th Ave.,  
Lewiston, Idaho

Dear Mr. Haddon:

You will recall my visit with you April 25 at Lewiston, regarding your back injury. We have been instructed to see that you are given a thorough examination by an orthopedic specialist and from inquiries we have made would prefer to have that examination made by Dr. Jerome K. Burton of

Boise. Such, however, would require a trip down here by you for that purpose.

We would like to know by return mail, if possible, if such a trip could be made. The bus connections down through Grangeville and New Meadows are fairly good for such a trip. It may be too strenuous a trip from you that way. It would probably be better to arrange to make the trip by train. If you can see your way clear to come to Boise we would, of course, have the company remit payment to you of your expenses in that connection.

Please give us a reply and we are enclosing self-addressed, stamped envelope for your use in that connection. If, however, you know of a good orthopedic specialist in that area, kindly advise us as to whom it is. In the meantime, your accident and injury is being checked on in Honolulu and we should have some word before long concerning the same.

Yours very truly,

NICHOLS ADJUSTMENT

BUREAU OF IDAHO

By DAVID F. HART,

Attorney & Adjuster

DFH:J [90]

## CLAIMANT'S EXHIBIT No. 4

[Letterhead of Nichols Adjustment Bureau.]

June 3, 1943

Mr. Tex M. Haddon  
415 Adams Street  
Lewiston, Idaho

Dear Mr. Haddon:

This will acknowledge receipt of your letter of June 1 regarding proposed trip to Boise. I believe that you should plan on about two full days time here in Boise in the event the doctor requires you to go to the hospital for the purpose of this examination.

It will also probably take two full days travel for you to make the trip here and return.

Kindly advise us when you are leaving and when you expect to arrive in Boise.

Yours very truly,

NICHOLS ADJUSTMENT

BUREAU OF IDAHO

By DAVID F. HART

Attorney &amp; Adjuster

DFH:J [91]



CLAIMANT'S EXHIBIT No. 5

[Letterhead of Nichols Adjustment Bureau.]

July 12, 1943

Mr. Tex M. Haddon  
415 Adams Street  
Lewiston, Idaho

Dear Mr. Haddon:

We are enclosing herewith Draft No. D61-42546 of the Liberty Mutual Insurance Company, dated July 2, 1943, payable to your order in the amount of \$28.28, which is for reimbursement for your expenses on your trip from Lewiston to Boise and return, for medical examination.

We are not yet in a position to give you any information as to the disposition of your claim for compensation benefits.

The medical reports from the doctors here in Boise have not all been completed, but we will get in touch with you as soon as we have some information of interest.

Very truly yours,

NICHOLS ADJUSTMENT

BUREAU OF IDAHO

By DAVID F. HART,

Attorney & Adjuster

DFH:ff [92]

## CLAIMANT'S EXHIBIT No. 6

[Letterhead of Nichols Adjustment Bureau.]

September 3, 1943

Mr. Tex M. Haddon  
415 Adams Street  
Lewiston, Idaho

Dear Mr. Haddon:

This will acknowledge your letter of August 31st advising that you would endeavor to be in San Francisco the 14th or 15th of September for further examination.

Kindly take this letter with you and contact Mr. Tracy C. Chandler in the claims Department of the Liberty Mutual Insurance Company, 703 Market Street, San Francisco, California. He will then take care of you from that point on.

We are advising the insurance company that you will be in San Francisco not later than September 15th, so kindly make your plans to be there not later than that date.

You can take the matter of your expenses for the trip up with Mr. Chandler after you arrive there.

We note that your address now is 415 Adams Street, to which we are addressing this communication.

Very truly yours,

NICHOLS ADJUSTMENT  
BUREAU OF IDAHO

By DAVID F. HART,

Attorney &amp; Adjuster

DFH:DH [93]

[Title of Commission and Cause.]

INTERROGATORIES TO DAVID HART

1. State your name and residence address.

Ans. David F. Hart, 1508 No. 7th St., Boise, Idaho.

2. What is your occupation?

Ans. Attorney at Law, occupied principally with insurance investigations and claims adjustments.

3. By whom are you employed?

Ans. Self. I do and have for some time past managed Nichols Adjustment Bureau of Idaho on a retainer fee basis.

4. Did you ever have occasion to talk to Tex M. Haddon in connection with the above claim?

Ans. Yes.

5. Relate as accurately as possible the dates when and the places where you had occasion to talk to Mr. Haddon with reference to this matter, and the subject of your conversation with him on each occasion.

Ans. First conversation April 25, 1943 at claimant's residence, Lewiston, Idaho. Discussed and took statement of facts; claimant's activities; medical examinations; his employment of attorney and his report of accident to Company and to U.S. Employees' Compensation Commission. Four or five conversations at intervals between June 9 and June 15, 1943, at my office, 1st National Bank Bldg., Boise, Idaho. Discussed his examinations by doctors at Boise; that such examination and pay-

ment of travel expenses not admission of liability and advice that carrier had not then accepted liability on claim. Have no recollection of any discussion about employment of attorneys or filing of claim with U.S. Commissioner.

6. Did you ever lead him to believe that the filing of a formal claim was not necessary, or ever tell him that it was not necessary for him to employ an attorney?

Ans. No. At conversation April 25, 1943, Claimant asked me if it was necessary for him to employ *and* attorney. I told him that was a matter of his own choosing; that I was then in Lewiston, Idaho, on a [101] case being heard by U. S. Commissioner Marshall on a claim involving same employer and carrier, and that that claimant had two attorneys representing him on his case. That a number of other cases I knew of the claimants had employed attorneys; that I knew of a number of cases where the employees did not employ attorneys, but attended the hearings by themselves and presented their own cases to the commissioner and that my observation was the Commissioner was invariably fair and the employees seemed to get along all right in presentation of their cases. That as to employment of an attorney to assist him, that was entirely up to him, Mr. Haddon. I did not tell him not to employ an attorney. I asked him if he had filed a notice of claim & injury with U. S. Employee's Compensation Commission at Honolulu before he left the islands, & as I recall, he said he didn't know whether he did or not, & I replied if he had filed such he would likely hear from the Commissioner in due course.

7. As a matter of fact, was the matter of filing a claim ever discussed with him?

Ans. Yes, but only on the occasion and to the extent related in interrogatory 6 next above.

8. State any other facts that you may know pertaining to this matter not specifically covered above.

Interlineation of what was apparently question #8 made by pen, was not made by this witness, but was there when deposition received.

DAVID HART

United States of America,  
District of Idaho,  
City of Boise—ss.

I, Dale Hart, a Notary Public in and for the State of Idaho, residing in the City of Boise, Idaho, duly commissioned and sworn, do hereby certify that the witness to the foregoing deposition named David Hart was before examination, by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that the foregoing interrogatories were then asked the said David Hart, and his answers thereto were then correctly transcribed by me as above set forth; that said deposition [102] was then carefully read by said witness and then subscribed by him in my presence.

Witness my hand and official seal this 28th day of March, 1944.

[Seal]

DALE HART

Notary Public in and for the  
State of Idaho, residing at  
Boise.

Copy Received Date 2/18 1944 Koenigsberg and Sanford, Attorneys for Tex Haddon, Plaintiff-Defendant by c.r. [103]

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[Title of Commission and Cause.]

CROSS INTERROGATORIES TO  
DAVID HART

1. When you received the letter from Morrison-Knudsen Company, Inc., dated April 6, 1943, did you know that Tex Haddon was making a claim for injuries sustained?

Ans. No. I had never known of or heard of Tex Haddon or any injuries he may have sustained prior to the receipt of the letter.

2. Did you advise Dr. E. L. White under date of April 7, 1943, that Tex Haddon should be patient for a few days and you would advise him "the status of his claim"?

Ans. You apparently refer to a letter bearing my signature from Nichols Adjustment Bureau of Idaho, under date of April 7, 1943, to Dr. E. L. White, White Hospital, Lewiston, Idaho. The written contents of the letter speak for themselves. I did not orally, or otherwise advise Dr. White.  
[104]

3. Did you ever advise him the "status of his claim" was such that he should file claim in the deputy commissioner's office?

Ans. No. I never did, of my own knowledge know of the status of claimant's claim in the Dep-



uty Commissioner's Office. My sole obligation was the investigation of the claim for the Surety and I was hardly in a position at any time to afford or give claimant legal advice as to his procedure. I did tell claimant while he was in Boise, Idaho between June 9 and June 15, 1943, that the carrier had not as yet accepted liability on his claim for compensation benefits.

4. Did you visit with the claimant on April 25, 1943?

Ans. Yes, I conversed with him and took his written statement of facts at his home at 1734-7th Ave., Lewiston, Idaho on that date.

5. Did you advise the claimant on April 25, 1943, that it was very seldom an attorney was necessary, as the men were dealt with fairly and squarely?

Ans. No. The substance of my conversation with him relative to employment of an attorney was that that was a matter of his own choosing; that I was then in Lewiston on a case being heard by U. S. Commissioner Marshall, involving same employer & carrier and that that claimant had two attorneys representing him. That a number of other cases I knew of, the claimants had employed attorneys; that I knew of a number of cases where the employees did not employ attorneys but attended the hearings by themselves and presented their own cases to the Commissioner, and that my observation was the Commissioner was invariable fair and the employees seemed to get along all right in presentation of their cases. That as to the employment of

an attorney to assist him, that was entirely up to him. I did not tell him not to employ an attorney.

6. Did you, subsequent to one year after the sustaining of the injury, arrange for a trip to be taken to San Francisco by the claimant, for the purpose of the examination?

Ans. This question is ambiguous to me. After claimant had been examined by Doctors at Boise, Idaho, June 1943. I was advised by Surety that they wanted Mr. Haddon to come to San Francisco for a further medical examination & I simply wrote to Mr. Haddon, probably in August or September of 1943, inquiring as to his making the trip & advising him as to the date and place of the examination. I do not have in my possession the carbon copies of the letters addressed to him in this connection, to accurately refresh my memory.

7. Did you, at the time you arranged for the trip to San Francisco, expect to attempt to take advantage of the claimant's failure to file a claim with the deputy commissioner?

Ans. I cannot answer this question yes or no, as to my mind the question is ambiguous, incompetent, irrelevant and immaterial. I do not concede that I arranged for the trip to San Francisco, I only assisted in those arrangements for this trip. As to my expectations I never at any time expected to, or desired to, or attempted to take advantage of the claimant's failure, if he did fail, to file a claim with the Deputy Commissioner. I did not know whether or not, of my own knowledge, he had filed a claim with the Deputy Commissioner. I had no

authority to take any steps to perfect or to defeat any claim he might have. My job was simply to learn the facts and details and render assistance, as I was from time to time instructed, in having medical examinations made of this claimant. [105]

DAVID HART

United States of America,  
District of Idaho,  
City of Boise—ss.

I, Dale Hart, a Notary Public in and for the State of Idaho, residing in the City of Boise, duly commissioned and sworn, do hereby certify that the witness to the foregoing deposition named David Hart was, before examination, by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that the foregoing interrogatories were then asked the said David Hart, and his answers thereto were then correctly transcribed by me as above set forth; that said deposition was then carefully read by said witness and then subscribed by him in my presence.

Witness my hand and official seal, this 28th day of March, 1944.

[Seal] DALE HART

Notary Public in and for the State of Idaho, residing at Boise. [106]

[Title of Commission and Cause.]

INTERROGATORIES TO  
ARTHUR E. LUKEHARDT

1. Please state your name and residence address.

Ans. Arthur E. Lukehardt, 89th U. S. Naval Construction Battalion, Camp Parks, Shoemaker, Calif.

2. What is your occupation and the name of your employer?

Ans. Chief Shipfitter, U. S. Naval Reserve.

3. How long have you been so employed?

Ans. About seven or eight months.

4. What particular phase of the construction work at Barbers Point, Honolulu, were you in charge of during the year 1942?

Ans. I was plumbing foreman.

5. Do you remember an employee by the name of Tex Haddon who was employed there as a plumber during 1942?

Ans. I do.

6. Under whose supervision did he work during the last ten months of that year?

Ans. Under mine.

7. Mr. Haddon claims to have received an injury during May or June of 1942 while attempting to lift a piece of vent line in a vertical position. Do you recall his reporting the alleged accident to you?

Ans. No, I can't remember that he reported that alleged accident to me. [107]

8. What is your usual procedure when an employee reports he has been injured on the job?

Ans. Send him to the dispensery.

9. Did Mr. Haddon ever complain to you about his back?

Ans. Well, yes.

10. Did he ever tell you that he attributed his trouble to any particular incident at any particular time?

Ans. No.

11. Do you recall whether or not there was a change in the type of work that he performed after June, 1942, until finishing out his contract in December, 1942?

Ans. There was no change in the type of work he performed.

12. If so, what was the reason?

Ans. See answer to question 11.

13. Did he lose any time from his job during the time that he was under your supervision?

Ans. None, to the best of my knowledge.

ARTHUR E. LUKEHARDT

United States of America

District of Northern, So. Div.

City of Oakland, Calif.—ss.

I, J. Kerwin Rooney, a Notary Public in and for the County of Alameda, residing in the City of Oakland, duly commissioned and sworn, do hereby certify that the witness to the foregoing deposition named Arthur E. Lukehardt was before examination, by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that the foregoing interrogatories were then

asked the said Arthur E. Lukehardt, and his answers thereto were then correctly transcribed by me as above set forth; that said deposition was then carefully read by said witness and then subscribed by him in my presence.

Witness my hand and official seal this 28th day of April, 1944.

J. KERWIN ROONEY

Notary Public in and for the County of Alameda,  
residing at Oakland.

Copy Received. Date 2/18 1944. Koenigsberg & Sanford, Attorneys for Plaintiff Tex Haddon by C. K. [108]

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[Title of Commission and Cause.]

INTERROGATORIES TO  
S. L. PLATT

1. Please state your name and residence address.

Ans. Sanford L. Platt, 1924 St. Louis Drive,  
Honolulu, T. H.

2. What is your occupation and nature of your duties?

Ans. Personnel Director.

3. By whom are you employed?

Ans. Honolulu Rapid Transit Co. Ltd., since February 1, 1944. From December, 1941 until Jan. 31, 1944, I was employed by the Contractors, P.N.A.B. in the same capacity.

4. How long have you been so employed?

Ans. Since Feb. 1, 1944.



5. As personnel manager for Contractors Pacific Naval Air Bases, do you have custody of employees' employment records?

Ans. They were in my custody and are still available for my perusal.

6. Referring to those records, do you find any report of any accident or injury sustained by one Tex Haddon during his employment with your organization?

Ans. No.

7. Do you find any record of any unusual absences from work, either lengthy or intermittent in nature?

Ans. No, Both his work record and his attendance record were exemplary.

SANFORD L. PLATT

Received: Mar. 20, 1944. Honolulu. [109]

United States of America

Territory of Hawaii

City of Honolulu—ss.

I, Maurice I. Takasaki, a Notary Public in and for the Territory of Hawaii, residing in the City of Honolulu, duly commissioned and sworn, do hereby certify that the witness to the foregoing deposition named S. L. Platt was before examination, by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that the foregoing interrogatories were then asked the said S. L. Platt, and his answers thereto were then correctly transcribed by me as above set forth; that

said deposition was then carefully read by said witness and then subscribed by him in my presence.

Witness my hand and official seal this 20th day of April, 1944.

MAURICE I. TAKASAKI

Notary Public in and for the Territory of Hawaii,  
residing at Honolulu.

Notary Public First Judicial Circuit Territory of  
Hawaii.

My commission expires June 30, 1945.

Witnessed by Lella L. Whiting.

Copy Received. Date 2/18 1944. Koenigsberg &  
Sanford, Attorneys for Pltff Tex Haddon by C. K.

[110]

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[Title of Commission and Cause.]

INTERROGATORIES TO  
CEDRIC L. BRASH

Q. State your name and residence address.

A. Cedric L. Brash, 736 Lincoln Ave., Alameda, Calif.

Q. What is your occupation and nature of your duties?

A. Manager, Legal Dept., Contractors Pacific Naval Air Bases, Oakland, California.

Q. By whom are you employed?

A. Contractors Pacific Naval Air Bases, 2129 Grove St., Oakland, California.

Q. How long have you been so employed?

A. Since Mar. 6, 1941 continuously.

Q. Are you in charge of the files pertaining to claims filed by employees of Contractors Pacific Naval Air Bases under contract NOY-3550 and NOY-4173?

A. Yes.

Q. Referring to those files, will you please produce and attach to this deposition the originals of any and all claims filed by Tex M. Haddon.

A. Answering this question, I must necessarily preface my reply with the statement that I can vouch only on matters pertaining to Mr. Haddon's file at this office (Oakland, California). There is also a file on the claimant at Pearl Harbor, and in that particular I qualify my answer as follows:

Received: Mar. 25, 1944. District No. 14. [111]

I attach hereto two (2) claim statements filed by Tex M. Haddon at this office in the month of December, 1942. They are dated December 24, 1942, and December 23, 1944 (?). The file shows that he was returned aboard the U. S. Transport U. S. S. Henderson, returning to the mainland through the Port of San Francisco on December 28, 1942. These dates are obviously in error.

Q. Is there anything whatsoever in your file indicating that Mr. Haddon mentioned any alleged injury to your company?

A. I have examined the file thoroughly, particularly on several occasions recently in preparation for the answering of these interrogatories, and I

certify that there is nothing in our personal files indicating or suggesting a complaint or report on the part of Tex M. Haddon that he sustained any injury, traumatic or otherwise, or industrial ailment while in our employ.

Q. Can you give any explanation why two separate statements were filed—one dated December 23, 1942, and the other dated December 24, 1942?

A. Yes. It has been the custom and practice of Contractors to have a personnel representative at shipside to meet all contingents of men returning from our employment on the island jobs, at which time they were accustomed to receiving their final pay-off checks and also at which time each and every man available was furnished with one of our claim forms (identical with Exhibits A and B) with instructions to him that he fill it out completely and that if he had any claim of any nature, he give particulars.

It is my belief that the form dated December 23, 1944 (Exhibit A) was in fact made on December 23, 1942. This statement, it will be noticed, was written in pencil. It will also be noted that Tex M. Haddon apparently had no complaints or claims.

The second claim statement (Exhibit B) is filled in with pen and ink and is dated December 24, 1942 (apparently it should have been December 29, 1942). At that time Tex M. Haddon was claiming underpayment in the amount of \$39.50, representing money held out of his wages for accommodations furnished him while he was standing by

on the mainland awaiting outbound transportation.

This second statement, I believe, was filed at the Alameda Naval Air Station office (our address at that time), but it will be noted that no claim was made referring to any physical injury or ailment or claim for Workmen's Compensation benefits. In this particular it is stated by me that had claimant asserted industrial injury or ailment while on our job, a record would have been made of it and the matter would have been referred to the office of the Liberty Mutual Insurance Company at San Francisco. [112]

**CEDRIC L. BRASH**

United States of America  
District of Northern California  
City of Oakland—ss.

I, Carl Appelbaum, a Notary Public in and for the County of Alameda, State of California, residing in the City of Oakland, duly commissioned and sworn, do hereby certify that the witness to the foregoing deposition named Cedric L. Brash was, before examination, by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that the foregoing interrogatories were then asked and the said Cedric L. Brash, and his answers thereto were then correctly transcribed by me as above set forth; that said deposition was then carefully read by said witness and then subscribed by him in my presence.

Witness my hand and official seal this 21st day of March, 1944.

[Seal]

CARL APPELBAUM

Notary Public in and for the County of Alameda,  
State of California, residing at 6140 Contra  
Costa Road, Oakland, California. [113]

### EXHIBIT A

This Form to be Filled in Completely by all  
Returned Men

Contractors  
Pacific Naval Air Bases  
P. O. Drawer "F"  
Alameda, California

### Statement

1. Name (Last name) Haddan, (First name)  
Tex, (Middle Ini.) M.

2. Social Sec. No. 535-07-9492. Draft Board No.  
...., (City) Lewiston, (State) Idaho.

3. Last position as plumber on .....

4. Date sailed from mainland 1-10-42. Name of  
boat Wharton.

5. Date returned on mainland 12-28-42. Name  
of boat Henderson.

6. Through what mainland port did you return?  
Frisco.

7. Reason for my return to mainland. Finished  
cont.

8. My employment contract signed at (City)  
Alameda, Calif.



9. Statement of undersigned:

.....  
.....

Dated: Alameda, California .... day of 12-23,  
1944.

TEX M. HADDAN

Signature

.....

Witness

Mailing Address: Spokane, Wash. c/o A. Dibble.

If interested in re-employment check: Yes ( )

No ( )

Note: Give Dates, Places and Names of persons especially familiar with the facts. Use reverse side if space provided hereon is insufficient. [114]

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EXHIBIT B

Contractors

Pacific Naval Air Bases

P. O. Drawer "F"

Alameda, California

Statement

1. Name (Last name) Haddon, (First name) Tex, (Middle Ini.) M.
2. Last position as plumber on Barber's Point.
3. Date sailed from mainland 1-10-42. Name of boat Wharton.
4. Date returned on mainland 12/28/42. Name of boat Henderson.

5. Through what mainland port did you return?  
Frisco.

6. Reason for my return to mainland    Finished  
cont.

.....  
7. My employment contract signed at (City)  
....., Calif.

8. Statement of undersigned:

\$39.50 was held out of my wages for c/a & hotel  
bills going out. And my contract was signed on  
the 23 and was dated the 24. I'm one day short.

Note: Give Dates, Places and Names of persons  
especially familiar with the facts. Use reverse side  
if space provided hereon is insufficient.

Dated: Alameda, California 24th day of Dec.,  
1942.

/s/ TEX M. HADDON

Signature

.....

Witness

Address: Spokane, Wash.

c/o A. Dibble, R. #8 [115]

---

### CERTIFICATION

Re: Liberty Mutual Insurance Company

vs.

Wm. A. Marshall

C. A. #962

This certifies that the following documents are a

part of the record of the proceedings before me in the above entitled case.

Interrogatories and Answers by Forrest E. Williams dated April 3, 1944.

The report of a Medical Examination made on February 9, 1944, by Dr. H. J. Wyckoff an impartial examining physician, at the request of the Deputy Commissioner.

WM. A. MARSHALL

Deputy Commissioner

Fourteenth Compensation  
Commission

Seattle, Washington

August 19, 1944

Endorsed: Filed Sep. 4, 1944. [116]

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[Title of Commission and Cause.]

INTERROGATORIES TO  
FORREST E. WILLIAMS

1. Please state your name and residence address.

Ans. Forest Edward William, Sr. 1333 W. 42nd Street, Los Angeles, California.

2. What is your present occupation? and name of your employer?

Ans. Plumber, J. L. Krueger Company.

3. What was your occupation and name of employer during 1942?

Ans. General Plumbing Foreman—Pacific Naval Air Bases.

4. What particular phase of the construction work at Barbers Point, Honolulu, were you in charge of during the year 1942?

Ans. Constructing Pacific Naval Air Base. Plumbing and steam fitting supervision.

5. Do you remember an employee by the name of Tex Haddon who was employed there as a plumber during 1942?

Ans. Yes.

6. Under whose supervision did he work during the last ten months of that year?

Ans. Directly under my sub-foreman.

7. Mr. Haddon claims to have received an injury during May or June of 1942 while attempting to lift a piece of vent line in a vertical position. Do you recall his reporting the alleged accident to you?

Ans. I recall sub-foreman reporting the accident to me verbally but could not verify definite time of accident. [117]

8. What is your usual procedure when an employee reports he has been injured on the job?

Ans. Send him to doctor and hospital Emergency hospital on job.

9. Did Mr. Haddon ever complain to you about his back?

Ans. Yes he has various times while I was on the job.

10. Did he ever tell you that he attributed his trouble to any particular incident at any particular time?

Ans. Not that I can recall.

11. Do you recall whether or not there was a change in the type of work that he performed after June, 1942, until finishing out his contract in December, 1942?

Ans. Yes he was given lighter work to do because my instructions was to keep every man on the job.

12. If so, what was the reason?

Ans. On account of injury to back.

13. Did he lose any time from his job during the time that he was under your supervision?

Ans. Not that I can recall.

FORREST E. WILLIAMS

United States of America

District of .....

City of .....—ss.

I, Betty Jane Smock, a Notary Public in and for the City of Los Angeles, residing in the City of Los Angeles, duly commissioned and sworn, do hereby certify that the witness to the foregoing deposition named Forrest E. Williams was before examination, by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that the foregoing interrogatories were then asked the said Forrest E. Williams, and his answers thereto were then correctly transcribed by me as above set forth; that said deposition was then carefully read by said witness and then subscribed by him in my presence.

Witness my hand and official seal this 3rd day of April, 1944.

BETTY JANE SMOCK

Notary Public in and for the County of Los Angeles, residing at Los Angeles.

My Commission expires July 8, 1947.

Copy received. Date 2/18 1944.

KOENIGSBERG & SANFORD,  
Attorneys for Plaintiff by c.k.

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(Letterhead of H. J. Wyckoff)

February 9, 1944

Tex M. Haddon,—Report, Special Orthopedic Examination. DB-P-1-8269. United States Employees Compensation Commission.

History: This man states that in June, 1942, while raising or holding some heavy pipe above his head, he felt a snapping sensation in the lower back. He said that things sort of went black for a moment and he put his hand on his back. He states that he seemed to have some disturbance of control of the legs so after reporting to the office he was put on lighter work. Following this he had severe pain in the back and sort of cramping sensations in both legs, more severe in the left. He states that soon after this he returned to the States and after arriving here he developed a rather severe cold and with this he had a severe knife like pain in the lower back.

Present Complaints: He states that at the pres-



ent time the condition is somewhat improved but he still has some pain in the lower back and a feeling of tightening of the muscles in the lower extremities. He states that he has a pumping sensation in the ankles, knees and hips. He states that following the original trouble the pain seemed to be referred down the left thigh and left leg as far as the foot. He also had pain which he felt was referred up in the region of the right shoulder and right upper arm.

Past History: He states that he has never had any previous injuries and no previous back trouble. He has never had any operations.

Examination: This man is 49 years of age. 5' 11" in height and weighs about 165#. He can bend forward to within 12" of the floor. Backward bending is markedly limited, at least 50%, lateral bending is limited about 50%, in each direction in the lumbar region and rotation is limited about 25%, in each direction, in the lumbar region. Motion of the cervical and dorsal spine seems to be fairly free. He has good motion of the left upper extremity. He has good motion of the right elbow, wrist and fingers. The right shoulder is markedly limited, can be abducted about 60 degrees, rotation is limited about 50% in each direction, with a complaint of pain in the region of the right shoulder joint. He complains of tenderness over the lumbo-sacral region and out over the superior gluteal region on either side. There is a dulling of sensation over the outer side of the left leg and foot, sensation otherwise seems to be normal.

The abdominal, cremasteric and patellar reflexes are equal and active, the right Achilles reflex is present, the left is entirely absent. On measurement about the calf regions, the left is  $\frac{1}{4}$ " less than the right. Measurements about the lower thigh, the left is 1" less than the right, over the midthigh the left is  $\frac{3}{8}$ " less than the right. He has intermittent spasm of the lower back muscles but does not have a fixed protective spasm of these muscles.

The eyes appear normal, pupils reacting to light and accommodation. All of the teeth have been extracted and he is wearing upper and lower plates. The tonsils are small. Measurements about the arms and forearms are practically the same on both sides. This man is normally right handed.

Received: Feb. 15, 1944. District No. 14. [119]

This man shows a relaxation of the right wrist, with considerable forward and backward motion at the wrist joint or through the carpal joints, which he states was due to an old injury during the last world war. He states there was no injury to the shoulder at that time as far as he knows, although there may have been an injury to the right shoulder at that time.

X-Rays: Of the right shoulder show no definite pathology in the region of this shoulder, except possibly a slight narrowing of the joint space and some slight bone atrophy of the bones about this joint. X-Rays of the lumbosacral spine show no pathology in the lateral view, except a slight narrowing of the intervertebral space between the

4th and 5th lumbar vertebrae, in the lateral view. There seems to be a very slight lipping of the 5th lumbar vertebra.

Conclusions: The clinical findings and history in this man's case are very typical of a displaced intervertebral disc between the 5th lumbar vertebra and the sacrum, on the left side. There is also some pathology in the region of the right shoulder which is probably in the nature of an arthritis involving this shoulder joint. I think it is possible that the lesion which he has at the present time occurred at the time of his accident, of June, 1942. The condition of the right shoulder is probably an inflammatory condition and does not seem to be definitely connected with his injury.

I would recommend an operation for this man's back, exploring the region between the lumbar vertebrae and the sacrum on the left side. This is a case which probably will not need to be fused but this should be determined at the time of operation.

H. J. WYCKOFF.

HJW:E

In the District Court of the United States  
for the Western District of Washington  
Northern Division

No. 962

LIBERTY MUTUAL INSURANCE COMPANY,  
a Corporation and Contractors, Pacific Naval  
Air Bases, an Association,

Libellants,

vs.

WILLIAM A. MARSHALL, Deputy Commis-  
sioner of United States Employees' Compensa-  
tion Commission for the Fourteenth Compensa-  
tion District,

Respondent.

### MOTION TO DISMISS

Comes now William A . Marshall, Deputy Com-  
missioner of the United States Employees Com-  
pensation Commission for the Fourteenth Compensa-  
tion District, defendant in the above entitled  
cause, and respectfully moves the Court for an or-  
der dismissing the bill of complaint for mandatory  
injunction herein.

This motion is based upon the files and records  
in the above entitled cause.

J. CHARLES DENNIS

United States Attorney

HERBERT O'HARE

Asst. United States Attorney

Copy Received Sept. 6, 1944. Eggerman, Rosling  
& Williams, Attorneys for Libellants.

[Endorsed]: Filed Sep. 7, 1944. [121]

District Court of the United States  
for the Western District of Washington  
Northern Division

No. 962

LIBERTY MUTUAL INSURANCE CO., et al,  
Plaintiff,

vs.

WILLIAM A. MARSHALL and TEX M. HAD-  
DON,

Defendants.

MOTION TO INTERVENE

Comse now the defendant, Tex M. Haddon and respectfully moves the court to enter an order herein permitting said defendant to intervene on the ground and for the reason in the event petitioner is successful in the above-cause the judgment will adversely affect the undersigned.

This motion is based upon the files and records herein, and the affidavit of L. M. Koenigsberg hereto attached.

KOENIGSBERG & SANFORD

Attorneys for Defendants

Received a copy of the within motion this 12 day  
of Sep. 1944.

J. CHARLES DENNIS

Attorney for Defts.

Copy Received Sep. 14, 1944.

EGGERMAN, ROSLING &  
WILLIAMS

Attys. for Pltf. & Dft.

[Endorsed]: Filed Sep. 14, 1944. [122]

[Title of District Court and Cause.]

AFFIDAVIT OF L. M. KOENIGSBERG

State of Washington,

County of King—ss.

L. M. Koenigsberg, being first duly sworn upon oath, deposes and says: That he is one of the attorneys for Tex M. Haddon in the above-entitled cause; that Tex M. Haddon is one of the real parties in interest; that in the event the plaintiff obtained a relief the petitioner of Tex M. Haddon will be adversely affected, and therefore desires to be permitted to intervene in the above-entitled cause.

L. M. KOENIGSBERG

Subscribed and sworn to before me this 12 day of August, 1944.

[Seal]

P. O. D. VEDOVA

Notary Public in and for the State of Washington,  
residing at Seattle.

Received a copy of the within Affidavit this 12 day of Sept. 1944.

J. CHARLES DENNIS

Attorney for Defts.

Copy Received Sep. 14, 1944.

EGGERMAN, ROSLING &  
WILLIAMS

Attys for Pltf. & Deft.

[Endorsed]: Filed Sep. 14, 1944. [123]



In the District Court of the United States  
for the Western District of Washington  
Northern Division

No. 962

LIBERTY MUTUAL INSURANCE COMPANY,  
a Corporation, and CONTRACTORS, PA-  
CIFIC NAVAL AIR BASES, an Association,  
Libellants,

v.

WM. A. MARSHALL, Deputy Commissioner of  
United States Employees' Compensation Com-  
mission for the Fourteenth Compensation Dis-  
trict,

Respondent,

TEX HADDON,

Intervenor.

STIPULATION THAT TRANSCRIPT OF PRO-  
CEEDINGS BE DEEMED A PART OF  
THE RECORD

It is stipulated by and between J. Charles Dennis  
United States Attorney for the Western District  
of Washington represening the respondent, Egger-  
man & Rosling & William representing the libel-  
lants, and Koenigsberg & Sanford representing the  
intervenor, that the transcript of the testimony of  
the hearing held before the respondent Wm. A. Mar-  
shall, and all the proceedings may be incorporated  
in and deemed a part of the record in this cause.

Dated this . . . day of September, 1944.

J. CHARLES DENNIS

By HERBERT O'HARE

Assistant U. S. Attorney

EGGERMAN & ROSLING &

WILLIAMS

By JOSEPH J. LANZA

KOENIGSBERG & SANFORD

By L. M. KOENIGSBERG

Copy Received Sep. 14, 1944.

EGGERMAN, ROSLING &

WILLIAMS

Attys for Pltf. & Deft.

[Endorsed]: Filed Sep. 14, 1944. [124]

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[Title of District Court and Cause.]

ANSWER

Comes Now Tex Haddon, Intervenor in the above-entitled cause, and answering Bill of Complaint for Mandatory Injunction admits, denies and alleges:

I.

Admits Paragraphs I to VII, inclusive.

2.

Answering Paragraph VIII, admits that thereafter on June 5, 1944, respondent made and entered his Compensation Order and Award of Compensation, a copy of which is attached to the complaint

marked "Exhibit A"; denies each and every other material allegation contained in Paragraph VIII.

3.

Admits Paragraph IX.

4.

Has not sufficient information upon which to form a belief as to the matter contained in Paragraph X and therefore denies the same. [125]

5.

Denies Paragraph XI and XII.

Further Answering Libellants' Bill of Complaint and by Way of Affirmative Defense, Intervenor alleges:

1.

That by stipulation heretofore made, a transcript of the testimony taken at the hearing before the Deputy Commissioner and the exhibits introduced therein may be deemed part of the record herein; that the Intervenor does by reference incorporate the same herein as though fully set forth herein.

2.

That upon motion heretofore made to duly dismiss the Libellants' Complaint, Libellants submitted a brief in which they have specifically waived Subdivisions 1 and 2 of Paragraph VII of their Complaint; and in addition, in Libellants' Complaint there are no specific allegations as to wherein the Deputy Commissioner's findings in reference

to Subdivisions 1 and 2 alleged in Paragraph VII of the Complaint were not in accordance with law.

## 3.

That Intervenor does by reference incorporate herein the transcript of all testimony taken in the above-entitled matter before the Deputy Commissioner and all the exhibits introduced.

## 4.

That the sum of \$150.00 is a reasonable sum to be allowed Intervenor as attorneys' fees in this cause of action.

Wherefore, having fully answered Libellants' Complaint, Intervenor prays that the Complaint be dismissed, and that he be awarded the sum of \$150.00 as attorneys' fees in this cause of action and his costs and disbursements incurred herein, and [126] such other relief as to the court shall seem meet.

KOENIGSBERG & SANFORD  
Attorneys for Intervenor

State of Washington,  
County of King—ss.

L. M. Koenigsberg, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the Intervenor in the above entitled cause of action; that he has read the foregoing Answer, knows the contents thereof, and believes the same to be true.

L. M. KOENIGSBERG

Subscribed and sworn to before me this 5th day of October, 1944.

P. O. D. VEDOVA

Notary Public in and for the State of Washington,  
residing at Seattle.

Copy Recvd. 10/5/44.

JOSEPH J. LANZA

Attny for Libellants.

Received a copy of the within Answer this 5 day of Oct. 1944.

J. CHARLES DENNIS

U. S. Attorney

Attorney for Respondent.

[Endorsed]: Filed Oct. 5, 1944. [127]

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[Title of District Court and Cause.]

ORDER GRANTING MOTION TO DISMISS

This matter came on regularly for hearing before the undersigned, one of the Judges of the above entitled court, on Monday, October 9, 1944, at 10:00 o'clock a.m., was continued to 4:00 o'clock p.m. on said date when argument was heard, which argument was concluded on October 10, 1944, libellants appearing by J. Lanza of Eggerman, Rosling & Williams, their attorneys, respondent appearing by his attorney, Herbert O'Hare, Assistant United States Attorney, Assistant to J. Charles Dennis, United States Attorney, and intervenor appearing

by his attorney, Leo M. Koenigsberg, and it having been stipulated by and between counsel for all the parties that the transcript of all the testimony taken before the respondent and all the exhibits introduced at the hearings before respondent be considered part of the files and records in this cause and that the court be permitted to peruse all of said records for the purpose of making his determination and ruling as to motion to dismiss made by counsel for the [128] respondent and intervenor, and the court having perused all of said records, and having listened to argument by counsel for libellants and the intervenor, Tex Haddon, and being fully advised in the premises,

Now, therefore, it is

Ordered, Adjudged and Decreed that the motion to dismiss be and is hereby granted.

It Is Further Ordered, Adjudged and Decreed that legal services rendered to the intervenor, Tex Haddon, by Leo M. Keonigsberg are of the reasonable value of \$150.00 and libellants will pay said sum of money to said Leo M. Koenigsberg, which payment shall constitute a lien on the compensation now or hereafter to become due to said intervenor, Tex Haddon, and said libellants shall be permitted to satisfy said lien by deducting \$15.00 from each bi-weekly payment now due or hereafter to become due, making said deductions until such time as the full sum of \$150.00 paid to Leo M. Koenigsberg has been fully satisfied. To all of which libellants except and their exception is allowed.



Done in Open Court this 16th day of October,  
1944.

JOHN C. BOWEN,  
Judge.

Presented by:

L. M. KOENIGSBERG  
Attorney for Intervenor.

O. K. as to form:

JOSEPH J. LANZA  
Attorney for Libellants

Approved:

HERBERT O'HARE  
Asst. United States Attorney

By L. M. KOENIGSBERG

Approved:

HERBERT O'HARE

[Endorsed]: Filed Oct. 16, 1944. [129]

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[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT  
APPEALS

Notice Is Hereby Given that Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an association, libellants above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order grant-

ing motion to dismiss entered in this action on October 16, 1944.

JOSEPH J. LANZA  
EGGERMAN, ROSLING &  
WILLIAMS

Attorneys for Libellants.

Address: 918 Vance Building, Seattle, Washington.

Received a copy of the within Notice of Appeal this 13th day of Jan. 1945.

J. CHARLES DENNIS  
Attorney for Respondent.

[Endorsed]: Filed Jan. 13, 1945. [130]

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[Title of District Court and Cause.]

### COST BOND ON APPEAL

United States Fidelity and Guaranty Company  
Baltimore, Maryland

Know All Men by These Presents: That we, Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an Association, as Principals, and United States Fidelity and Guaranty Company, a corporation of Baltimore, Maryland, Authorized to do the business of surety in the State of Washington, as surety, acknowledge ourselves to be jointly indebted to Wm. A. Marshall, Deputy Commissioner of the United States Employees Compensation Commission for

the 14th Compensation District, Respondent, and Tex Haddon, intervenor, in the above entitled cause, in the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, conditioned that, whereas, on the 16th day of October, 1944, in the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in that court wherein Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an Association, are Libellants, and Wm. A. Marshall, Deputy Commissioner of the United States Employees Compensation Commission for the 14th Compensation District, was Respondent, and Tex Haddon was Intervenor, an order was entered granting motion to dismiss, and the said Libelants having filed in the office of the Clerk of the said District Court a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California.

Now, Therefore, the condition of the above obligation is such, that if the said Liberty Mutual Insurance Company, a corporation, and Contractors, Pacific Naval Air Bases, an Association, shall prosecute its appeal to effect and answer all costs, if the appeal is dismissed or by judgment affirmed, or all such costs as the appellate court may award if the judgment is modified, then the above obligation is void, else to remain in full force and effect.

Sealed with our seals and dated this 12th day of January, 1945.

LIBERTY MUTUAL INSURANCE  
COMPANY, and CONTRACTORS,  
PACIFIC NAVAL AIR BASES, an  
Association.

By JOSEPH J. LANZA

one of their attorneys

[Seal] UNITED STATES FIDELITY AND  
GUARANTY COMPANY

By JOHN C. W. COLLISTER

Attorney in fact. [131]

State of Washington,  
County of King—ss.

On the 12th day of January, 1945, before me personally appeared John C. McCollister to me known to be the Attorney-in-fact of the corporation that executed the within and foregoing instrument as surety, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] J. C. BEERON

Notary Public in and for the State of Washington,  
residing at Seattle.

[Endorsed]: Filed Jan. 13, 1945. [132]

[Title of District Court and Cause.]

STIPULATION DESIGNATING RECORDS,  
PROCEEDINGS AND EVIDENCE TO BE  
CONTAINED IN THE RECORD ON AP-  
PEAL

Pursuant to Rule 75(f) of the Rules of Civil Procedure, it is hereby stipulated between Appellants, through their attorneys Joseph J. Lanza and Eggerman, Rosling & Williams, and Appellees, Wm. A. Marshall, through J. Chas. Dennis, United States District Attorney, and Herbert O'Hare, Assistant United States District Attorney, and Tex Haddon, through his attorney L. M. Koenigsberg, that the following disignations of the parts of the records, proceedings and evidence in the above entitled cause shall constitute the record on appeal therein, this designation to take the place of and be in lieu of Appellants' designation of record heretofore filed on January 26, 1945:

1. Bill of complaint for mandatory injunction filed July 5, 1944, and Exhibit "A" thereto attached.
2. Certification of record of Deputy Commissioner Wm. A. Marshall, filed September 4, 1944.

[133]

3. Transcript of testimony taken at hearing held by Deputy Commissioner Wm. A. Marshall on December 29, 1943.

4. Transcript of testimony taken at hearing held by Deputy Commission Wm. A. Marshall on February 8, 1944.

5. Original compensation order filed by Wm. A. Marshall on June 15, 1944.

6. Certification of record of Wm. A. Marshall filed September 4, 1944.

7. Claimant's Exhibits 1 - 6, inclusive, consisting of the following:

a. Letter from Morrison-Knudsen to Nichols Adjustment Bureau, dated April 6, 1943;

b. Letter from Hart to Dr. White, dated April 7, 1943;

c. Letter from Hart to Haddon, dated May 29, 1943;

d. Letter from Hart to Haddon, dated June 3, 1943;

e. Letter from Hart to Haddon, dated July 12, 1943;

f. Letter from Hart to Haddon, dated September 3, 1943.

8. Employer's Exhibits "A" and "B" consisting of the following:

a. Report of Dr. O. W. Jones, Jr., dated September 17, 1943;

b. Report of Dr. Frederick G. Linde, dated September 22, 1943.

9. Interrogatories and cross-interrogatories and answers thereto of David Hart.

10. Interrogatories and answers thereto of Arthur Lukehardt.

11. Interrogatories and answers thereto of Sanford Platt.

12. Interrogatories and answers thereto of Cedric L. Brash, including Exhibits "A" and "B" referred to therein.



13. Certification of record of Deputy Commissioner Marshall, filed September 4, 1944.

14. Interrogatories and answers thereto of Forrest E. [134] Williams.

15. Report of H. J. Wyckoff, M.D., of medical examination made on February 9, 1944.

16. Motion to dismiss filed September 7, 1944.

17. Motion to intervene filed September 14, 1944.

18. Stipulation that transcript of proceedings be deemed a part of the record filed September 14, 1944.

19. Answer to Tex Haddon filed October 5, 1944.

20. Order granting motion to dismiss filed October 16, 1944.

21. Notice of appeal filed January 13, 1945.

22. Cost bond on appeal filed January 13, 1945.

23. Stipulation designating parts of the record, proceedings and evidence in the record on appeal.

24. Appellants' statement of points.

25. Certificate of Clerk to transcript of record on appeal.

Dated this 16th day of February, 1945.

J. J. LANZA

EGGERMAN, ROSLING &

WILLIAMS

Attorneys for Appellants.

J. CHAS. DENNIS

U. S. District Attorney

HERBERT O'HARE

Asst. U. S. District Attorney  
Attorneys for Wm. A. Marshall, Deputy Commissioner

L. M. KOENIGSBERG

Attorney for Tex Haddon.

[Endorsed]: Filed Feb. 17, 1945. [135]

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[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

The following is a concise statement of the points on which Appellants intend to rely on appeal:

1. That the United States District Court for the Western District of Washington, Northern Division, erred in entering its order granting Defendants motion to dismiss.

2. That said District Court erred in refusing to annul, reverse, vacate and set aside by mandatory injunction or otherwise, compensation order and award of compensation made by Deputy Commissioner William A. Marshall on June 5, 1944

3. That there is no substantial evidence in the record to support the findings of the Deputy Commissioner that the Claimant's disability was the result of the accident complained of, and that such disability continued at the time of the hearing held on February 8, 1944.

4. That the Deputy Commissioner, in making the

findings as above, ignored proper medical evidence submitted therein. [136]

5. That the finding of the Deputy Commissioner as above is a mere assumption based upon possibility and conjecture instead of substantial proof, and is therefore not in accordance with law.

EGGERMAN ROSLING & WILLIAMS

JOSEPH J. LANZA

Attorneys for Appellants

Copy received Date 1/26 1945.

KOENIGSBERG & SANFORD

Attorneys for Plaintiff Defendant

By B. TAYLOR

Received a copy of the within Statement of Points this 26 day of Jan. 1945.

J. CHARLES DENNIS

U. S. Attorney for Wm. A.  
Marshall Dep Commr.

[Endorsed]: Filed Jan. 26, 1945. [137]

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[Title of District Court and Cause.]

STIPULATION FOR ORDER EXTENDING  
THE TIME FOR FILING THE RECORD  
ON APPEAL AND DOCKETING THE ACTION.

Pursuant to Rule 73 (g) of the Rules of Civil Procedure, it is hereby stipulated between Appel-

lants and Appellees through their respective attorneys of record, that the District Court may extend the time for filing the record on appeal with the appellate court and docketing the action to the 10th day of March, 1945.

Dated this 21st day of February, 1945.

JOSEPH J. LANZA  
EGGERMAN, ROSLING &  
WILLIAMS

Attorneys for Appellants  
J. CHARLES DENNIS

U.S. District Attorney  
ALLAN POMEROY

Asst. U.S. District Attorney  
Attorneys for Wm. A. Marshall

L. M. KOENIGSBERG  
Attorney for Tex Haddon

[Endorsed]: Filed Feb. 21, 1945. [137a]

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[Title of District Court and Cause.]

ORDER ON STIPULATION EXTENDING  
TIME FOR FILING THE RECORD ON AP-  
PEAL AND DOCKETING THE ACTION.

Pursuant to stipulation filed herein and by virtue of the authority granted to the District Court by Rule 73 (g) of the Rules of Civil Procedure, now therefore

It Is Hereby Ordered that the time for filing the

record on appeal with the appellate court and docketing the action in that court, is hereby extended to the 10th day of March, 1945.

Done In Open Court this 21st day of February, 1945.

JOHN C. BOWEN

District Judge

Presented by:

HENRY KASTNER

JOSEPH J. LANZA

of counsel for Libelants

OK

L. M. KOENIGSBERG

OK

ALLAN POMEROY

[Endorsed]: Filed Feb. 21, 1945 [137b]

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[Title of District Court and Cause.]

APPELLANTS' SUPPLEMENTAL DESIGNA-  
TION OF RECORD TO BE CONTAINED  
IN THE RECORD ON APPEAL.

Come now the Appellants above named and herewith designate the additional portion of the record to be contained in the record on appeal:

1. Stipulation and Order extending time for filing record and docketing case in the appellate court.
2. Appellants' supplemental designation of record.

Dated this 21st day of February, 1945.

JOSEPH J. LANZA  
EGGERMAN, ROSLING &  
WILLIAMS  
Attorneys for Appellants

Copy received Date Feb. 21, 1945.

KOENIGSBERG & SANFORD  
Attorneys for Plaintiff-  
Defendant

By B. TAYLOR  
HERBERT O'HARE  
EAS

[Endorsed]: Filed Feb. 21, 1945. [137c]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF TRANSCRIPT  
OF RECORD ON APPEAL

United States of America

Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered 1 to 137c, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by Designation of Counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District



Court at Seattle and that the same constitute the record on appeal from the order of dismissal of said United States District Court for the Western District of Washington to the United States Circuit of Appeals for the Ninth Circuit. [138]

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's Fees (Act of February 11, 1925) for making record, certificate or return.

87 folios at 15c .....	\$13.05
265 folios at 5s .....	13.25
Appeal fee (Section 5 of Act) .....	5.00
Certificate of Clerk to Transcript of Record .....	.50

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Total ..... \$13.80

I further certify that the foregoing fees have been paid by the attorney for the appellants.

In witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 22d day of February, 1945.

[Seal]

MILLARD P. THOMAS,

Clerk

By BONITA WATKINS

Deputy Clerk [139]

[Endorsed]: No. 10992. United States Circuit Court of Appeals for the Ninth Circuit. Contractors, Pacific Naval Air Bases, an association, and Liberty Mutual Insurance Company, a corporation, Appellants, vs. Wm. A. Marshall, Deputy Commissioner of the United States Employees Compensation Commission for the 14th Compensation District, and Tex Haddon, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed March 1, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10992

LIBERTY MUTUAL INSURANCE COMPANY,  
a corporation, and CONTRACTORS PACIFIC  
NAVAL AIR BASES, an association,

Appellants,

vs.

WM. A. MARSHALL, Deputy Commissioner of the  
United States Employees' Compensation Com-  
mission for the 14th Compensation District, and  
TEX HADDON,

Respondents.

APPELLANTS' STATEMENT OF POINTS ON  
WHICH THEY INTEND TO RELY ON  
APPEAL AND DESIGNATION OF THE  
RECORD DEEMED NECESSARY FOR  
THE CONSIDERATION THEREOF

Come now Appellants and, pursuant to Sub-  
division 6, Rule 19, of the Rules of the United States  
Circuit Court of Appeals for the Ninth Circuit,  
herewith adopt the statement of points filed in the  
District Court upon which Appellants intend to rely  
on appeal, and herewith designate the entire tran-  
script of record as prepared and certified by the  
Clerk of the District Court, to be printed for pur-  
poses of this appeal.

Dated this 23 day of February, 1945.

JOSEPH J. LANZA

EGGERMAN, ROSLING &

WILLIAMS

Attorneys for Appellants

Service of the foregoing by receipt of true copy thereof is hereby acknowledged this 23 day of February, 1945.

J. CHARLES DENNIS

U. S. District Attorney

HERBERT O'HARE

Asst. U.S. District Attorney

Attorneys for Wm. A. Marshall, Deputy Commissioner

L. M. KOENIGSBERG

Attorney for Tex Haddon

[Endorsed]: Filed Mar. 3, 1945. Paul P. O'Brien,  
Clerk.